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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884

No. 1278.

MORTON MARYE, AUDITOR OF THE STATE OF VIRGINIA; ISAAC R. BARKSDALE ET AL., APPELLANTS,

vs.

EDWIN PARSONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED MARCH 10, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

RICHMOND, VA., *February 25th*, 1885.

EDWIN PARSONS, Complainant,
vs.
MORTON MARYE, Auditor of Virginia; SAMUEL C. GREENHOW, A. L. Hill, and V. G. Dunnington, Treasurers of the cities of Richmond, Norfolk, and Lynchburg, respectively, and R. B. Munford, Charles D. Langley, and Charles W. Price, Commissioners of the Revenue for said cities, respectively, Defendants. } 378.

Be it remembered that heretofore, to wit, on the 21st day of February, A. D. 1885, came the complainant, and by leave of the court filed his bill against the above-named defendants, which bill, with the accompanying exhibits, is as follows:

In the United States Circuit Court for the Eastern District of Virginia.

EDWIN PARSONS
vs.
MORTON MARYE, Auditor of Virginia, *et als.* } 378.

2 To the Honorables H. L. Bond and Ro. W. Hughes, judges of the United States court for the eastern District of Virginia:

Your petitioner, Edwin Parsons, a citizen of the State of New York, respectfully represents unto your honors that—

On the 30th day of March, 1871, the State of Virginia, finding herself indebted to her bondholders in the sum of about forty-five millions of dollars, and feeling that, by reason of the partition of her territory and of her then impoverished condition by reason of the civil war, she ought not be held to the payment of this large sum, or of the annual interest thereon, proposed to her creditors, by an act of her General Assembly passed on that day, that if they would surrender to her their old bonds she would in exchange give them her new bonds for two-thirds of their amount, and for the other third a certificate setting forth that its payment would be provided for in accordance with such settlement as might subsequently be made between herself and the State of West Virginia, which, without her consent, had been previously formed out of a portion of her territory. And to induce her creditors to accept this proposal, and thus to release her from the said one-third of her old indebtedness, she offered that her new bonds should be

3 made in the form of coupon bonds, the coupons to be made payable to bearer, and to abundantly secure the payment of the interest upon these new bonds, no interest on the old bonds having been paid for many years, it was provided that the said coupons should be "receivable at and after maturity for all taxes, debts, and demands due the State," which was expressed upon their

face, thus in effect giving to every holder of any one of these coupons a lien upon her annual revenue to the amount thereof, and thereby securing to the holder of said bonds and coupons, if the latter were not punctually paid, a ready demand from the tax-payer of the State for their purchase at but a small discount. The great value of this privilege and security soon became manifest, for in a short time after these bonds were issued the State again failed to pay the interest thereon, yet, nevertheless, because of the receivability feature of the coupon, which for many years, and until a short time ago, were readily accepted by all the tax-collectors of the State in payment of dues whenever tendered, the holders thereof, until recent legislation depriving them for a time of this benefit, were able year by year to sell their maturing coupons to tax-payers at nearly par.

4 The proposal thus made by the State induced a large number of her creditors to surrender their old bonds and, upon the faith of this pledge, to take the new bonds with these interest coupons annexed for two-thirds of their amount, and certificates for the balance. A contract was thus executed between the State and the holders of these bonds and coupons, that they should have the right to transfer them to any tax-payer of, or debtor to, the State of Virginia, with all their qualities of receivability for taxes, etc., annexed. This contract has thus been interpreted by the Supreme Court of the United States: "She thus bound herself, not only to pay the bonds when they became due, but to receive the interest coupons from bearer at and after maturity to their full amount for any taxes or dues by him to the State. This receivability of the coupons for such taxes and dues was written on their face, and accompanied them into whatever hands they passed. It constituted their chief value, and was the main consideration offered to the holders of the old bonds to surrender them and accept new bonds for two-thirds of their amount." (Hartman *v.* Greenhow, 102 U. S., 679.) And again: "The right of the coupon holder is to have his coupons received for taxes when tendered." (Antoni *v.* Greenhow, 107 U. S., 775.)

5 Your petitioner furthermore shows unto your honors that the contract of the coupon on the part of the State is twofold:

First. That she will pay its amount to the holder on the day named.

Second. That if she failed to do so, he should have the right to assign or transfer the coupon to any tax-payer or other debtor of the State with the quality of being received for taxes annexed, and with the guarantee that she would receive it specifically in payment *pro tanto* of any taxes or debts due her, and that it should be accepted by any of her tax-collectors from any of her tax-payers or debtors in full discharge and payment of any taxes or other dues due by them to the State, for these coupons are negotiable when severed, and pass by delivery only, possessing the essential attributes of commercial paper." (Hartman *v.* Greenhow, 102 U. S., 684.)

Your petitioner further shows that he is the owner of twenty-eight

thousand and ten dollars ($28,010) of these coupons, and the bonds from which they were cut are now past due and unpaid, and were cut by himself from the genuine bonds issued and made by the State of Virginia under the act of the General Assembly aforesaid,

and are genuine, legal coupons, legally receivable for all
6 taxes, debts, and demands due the State, and that other coupons, cut by your petitioner himself from the same bonds, have been ascertained by a jury, according to one of the modes prescribed by the laws of Virginia, to be genuine, legal coupons, legally receivable for all taxes, debts, and demands due the State, or have been ascertained to be genuine by this honorable court and decreed to be accepted and funded into new bonds by the officers of the State.

Therefore, the coupons hereinbefore mentioned must of necessity be genuine, legal coupons, legally receivable for all taxes, debts, and demands due the State; and, in fact, the officers of the State, whose duty it is to receive, fund, and pay coupons of this kind, and to pass upon and determine their genuineness, have been tendered these coupons for funding at par, according to the provisions of what is knows as the Riddleberger bill and amendments, which was refused, although they professed their willingness and readiness to fund them at fifty cents on the dollar, according to their construction of the provisions of said law amended, thus fully admitting the genuineness of the said coupons. The said coupons all fell due January 1st and July 1st, 1884, and January 1st, 1885, and the

7 numbers of the bonds from which they were cut and their amounts and dates of maturity are set down in the paper marked "Exhibit A," which is prayed to be taken and read as a part of this bill, and are herewith exhibited to the court. Except as to their amount and the bond number and dates of maturity, these coupons are in the words and figures following, to wit:

"Receivable at and after maturity for all taxes, debts, and demands due the State.

"The Commonwealth of Virginia will pay the bearer thirty dollars, interest due January 1, 1885, on bond No. ——.

"GEO. RYE, *Treasurer*."

Your petitioner furthermore shows that, notwithstanding the terms of the coupon contract made with him by the Commonwealth of Virginia, she now refuses to perform any part of the same; and misguided and led astray by those who control her counsels and the administration of her affairs, she refuses either to pay these coupons, or to receive them from tax-payers in payment of their taxes, to the very great damage and injury of your petitioner, who can neither collect them directly nor avail himself of her promised privilege of doing

so indirectly by transferring them to tax-payers to be used in
8 payment of their taxes. This latter privilege he hath enjoyed to the full — until recently, and he prays that the same may be restored and preserved to him as freely as heretofore.

Your petitioner shows that, until a short time ago, the State,

through her collecting officers, had always received these coupons in full payment and discharge of any taxes or debt due her without hesitation or demur, but that now, for the purpose of delay and the obstruction of justice, and of deterring tax-payers from using them, and thus, to a large extent, depriving your petitioner of his most valuable right in the said coupon contract, to wit, of having them used freely by tax-payers, she refuses to accept the same, or pay them, until a separate suit shall have been brought by each separate tax-payer upon each separate tender, no matter how small, and requires that an appeal shall be taken and granted, as of right to the Commonwealth, from county to circuit, and from circuit to the court of appeals, in every case, even when the court below has made no error, all at the tax-payers' own costs, thus causing such vexatious litigation, obstruction, delays, and costs, and such a multiplicity of suits, as to preclude almost entirely the use of coupons
9 by tax-payers, to the great detriment and prejudice of your petitioner's rights. How exceedingly obstructive these new requirements have proved is abundantly manifest from the fact that before they were enacted all, or nearly all, of the coupons annually maturing—about a million and a half—were received for taxes, and thus redeemed; whereas since these obstructions were commenced—about three years ago—out of nearly $6,000,000 of matured coupons but $218,000 have been so used.

The amount of matured coupons outstanding when these obstructive measures were commenced, as also the number now annually maturing, appears from the statements of the Riddleberger bill; the amount of those which have since been received for taxes appears from the statement of the public debt as of January 31, last, made by the second auditor, a copy of which is herewith filed as "Exhibit B," and prayed, etc.

And your petitioner furthermore shows unto your honors that the pretense by the Legislature of Virginia, that there were, at the date of the act, containing such a recital, *i. e.*, in 1882, counterfeit and spurious coupons in existence, was entirely without foundation, and a mere subterfuge to uphold the obstructive measures aforesaid.
10 Your petitioner avers and charges most emphatically that there are not, and never have been, any forged coupons in circulation or existence, and although the bonds bearing these coupons have now run through about half their period to maturity, and thus half of all the coupons, amounting to many millions, attached to them have matured and found their way into the State treasury, never a single counterfeit has yet been seen, nor have more coupons been received there than the amount which properly and legally matured.

Your petitioner avers, however, that for the purposes of this suit, it matters not whether in 1882, when the said law was passed, there were forged and counterfeit coupons in circulation as alleged, because, if then in circulation, they must have been past due, whereas these now asserted in this suit have only just matured, and were by your petitioner himself cut from his genuine bonds.

And your petitioner shows unto your honors that the privilege of

having these coupons decreed to be genuine by this court, and of having them used by tax-payers in payment of their taxes, without objection or delay, is worth to him more than $500.

And he furthermore shows that the said State, having thus refused to pay her said coupons, which is her primary obligation thereunder, right hath accrued to him to demand absolutely
11 that she shall specifically execute the second portion of the contract thereof, and that her collectors shall, without objection, delay, or demur, specifically receive for taxes and dues these identical coupons, these identical tokens or bits of paper, in payment *pro tanto* of the taxes of any one tendering them for payment thereof to whom your petitioner may assign them.

And he furthermore avers and charges that it is notorious and well known to your orator that the defendants refuse to receive any of these coupons in payment of any taxes, debts, and demands due the State, and that therefore an actual*ly* tender of them for that purpose is wholly unnecessary.

Your orator also shows that the last General Assembly of Virginia, careless of the consequences clearly indicated by the Supreme Court in their decission of the suit of Antoni *vs.* Greenhow, 107 U. S., 775, and citation, passed laws forbidding the reception of these coupons at all in payment of certain taxes called license taxes, and of certain others called school taxes and capitation taxes, but all due to and levied by the State, and together aggregating nearly, if not quite, one full half of the amount of taxes annually so levied, and seeking to deprive the holders of these coupons of their right to have
12 them received for these taxes when tendered, and therefore in direct violation of the coupon contract, which promises that they shall be received "in payment of all taxes, debts, and demands due the State," have repealed all laws which provided any remedy for the enforcement of the right to have them so received for the taxes above designated.

And your petitioner furthermore shows that, confiding in his right to a specific performance of said contract, and in his title to equitable relief, should the same be denied, he hath made arrangements with sundry tax-payers of Virginia to use his above coupons in payment of their taxes and license taxes, now due, by which arrangement, if the said coupons can be used without delay or difficulty, he will receive nearly par therefor, and thus be able to have his coupons collected. But, unless they are so accepted in payment when tendered, the said tax-payers will not use them at all, because they are compelled to pay their taxes forthwith under heavy penalties, and to obtain their licenses immediately, or cease from business, so that, if the collectors of these taxes continue to refuse to accept these coupons, and so render necessary an appeal to the courts, and a separate action by each tax-payer upon each tender,
13 such refusal will be tantamount to an utter destruction of the rights of your petitioner, because delays will thus occur which the tax-payers cannot submit to for the above-named reasons and others, and thus your petitioner will be deprived of the benefit of the arrangements he has made, as well as of all opportunity of

having his coupons so used at any time, save in small amounts and at rare intervals.

The petitioner furthermore shows that the State, in her misguided efforts to avoid compliance with her aforesaid contract, and to deprive coupon holders of the benefit of their valuable tax-paying quality, hath made a law manifestly unconstitutional, and already so decided by this court, forbidding the same to be received in any manner whatever for license taxes, and providing that her auditor and her commissioners of the revenue shall not grant any licenses until the applicant therefor shall exhibit a certificate in writing from the said auditor, or from the county or corporation treasurer, that the applicant hath deposited with him the amount of said license tax in gold, silver, United States Treasury or national bank notes. But your petitioner avers that, notwithstanding said pretended law,
14 he hath the right to have his said coupons received in payment of all and every such license tax whenever tendered by any applicant for such in full discharge and payment of said tax; and that the auditor or treasurer receiving the same should execute a certificate showing such payment, and deposit, as above required, in precisely the same manner and to have precisely the same force and effect as if such deposit and payment were made in the coin or currency specified in the said law; and that the said auditor and commissioners of the revenue, upon application made to them for a license, accompanied by such a certificate, should forthwith issue such license in precisely the same manner, and to have precisely the same force and effect, as if said deposit and payment had been made in the coin or currency named in the aforesaid law; and that the said auditor and treasurer should receive the said coupons described in the "Exhibit A," herewith filed, or any of them, from any tax-payer, upon presentation, and without delay or demur, in payment of any taxes, debts, or demands due the State, and
15 deliver to said tax-payer immediately his tax bill duly receipted, in precisely the same manner as if said tax had been then and there paid in money.

Your petitioner shows that Morton Marye is the auditor of the Commonwealth of Virginia, and as such it is his duty to receive and receipt for certain taxes due the State, and also certain license taxes, and to issue certain licenses; and that Samuel C. Greenhow is treasurer of the city of Richmond, and A. L. Hill, treasurer of the city of Norfolk, and V. G. Dunnington, treasurer of the city of Lynchburg, and as such it is their duty to receive and receipt for certain other taxes due the State, and to receive and certify, as above described, the amounts paid to or deposited with them by applicants for licenses; and that R. B. Munford is the commissioner of the revenue for the city of Richmond, Charles W. Price for the city of Lynchburg, and Charles D. Langley for the city of Norfolk, and as such it is their duty to grant certain other licenses, upon application and the presentation by the applicant of the said certificate of deposit or payment by the said treasurers of these said cities respectively; and that each and every one of these officers refuse to receive the above-
16 named coupons in payment of said taxes and licenses taxes,

or to recognize or to permit in any manner their deposit for said license tax.

In tender consideration whereof, and inasmuch as your petitioner is without adequate relief save in a court of equity, wherein such matters are properly cognizable, and inasmuch as he will suffer great and irreparable loss and damage, exceeding $500 in amount, unless relief is afforded him immediately, and the above-named officers are required to perform specifically the contract aforesaid, and receive his said coupons in payment of all or any of the dues and taxes above named immediately upon their being tendered therefor by any tax-payer or applicant for a license, and to avoid a multiplicity of suits and prevent an obstruction of justice, he prays that Morton Marye, auditor of Virginia, Samuel C. Greenhow, A. L. Hill, and V. G. Dunnington, treasurers of the cities of Richmond, Norfolk, and Lynchburg, respectively, and R. B. Munford, Charles D. Langley, and Charles W. Price, commissioners of the revenue for said cities, respectively, be made parties defendant hereto, with apt words to charge them, and may be required on oath to answer fully the allegations hereof.

17 And that the said defendants, their assistants, clerks, and agents, be required and compelled to specifically perform the said coupon contract according to its legal tenor and effect, and to accept your orator's said coupons, or any of them, from any tax-payer presenting them or any of them in payment of his taxes, license taxes, or other dues, and to receipt therefor, or certify the payment and deposit thereof, in cases of applications for license, in precisely the same form and with precisely the same force and effect as they would do if said tender, payment, or deposit were made in money. And that your honors will decree said coupons to be genuine, legal coupons, legally receivable for all taxes, debts, and demands due the State of Virginia, and especially for all license taxes or assessments by whatever name the same may be called. And to the end that your orator may have full relief in the premises he also prays that a preliminary re-training order and injunction may be issued without delay, enjoining and restraining the said defendants, their assistants, clerks, and agents, and each and every one of them, from refusing to accept any of the coupons named in the Exhibit A herewith, in full payment *pro tanto* of the taxes, license taxes, or other dues, due by any tax-payer to the State

18 who may tender the same in payment thereof, and enjoining and restraining them from refusing to execute and deliver forthwith to such tax-payer his tax-bill, duly receipted, or to an applicant for a license a certificate that the amount of coupons tendered by such applicant has been deposited with him in payment of the tax or deposit required or assessed for said license, and from refusing, immediately upon the presentation of such certificate, to grant and issue the license applied for to such applicant, all in the same manner, and to have precisely the same force and effect as if said payments were made in coin or currency.

And that your orator may have such other, further, and general relief in the premises as the nature and the circumstances of his case

may require, and as shall also be meet and consistent with the principles of equity and good conscience.

And that writs of subpœna may issue out of and under the seal of this honorable court, directed to the above-named defendants and commanding them, upon a certain day therein named and a
19 certain penalty, to be and appear in this honorable court, and then and there to answer all and singular of the premises, and to stand to and perform and abide by such orders and decrees as may be made in the premises.

And as in duty bound your orator will ever pray.

EDWIN PARSONS.

RICHARD L. MAURY, *Solicitor.*

STATE AND CITY OF NEW YORK:

This day personally appeared before me, a commissioner for Virginia in the city of New York, Edwin Parsons, and made oath, in due form of law, that the matters and things in the foregoing bill set forth, of his own knowledge, are true, and those stated upon the information of others he believes to be true.

Given under my hand and seal, this twentieth day of February, 1885.

[SEAL.]

EDWIN F. COREY,
Commissioner for the State of Virginia,
Office, 54 Wall Street, N. Y.

The exhibits filed with the foregoing bill are as follows:

20 EXHIBIT A, filed with the Bill.

Consol coupons, $30, tendered by R. L. Maury, att'y, Dec. 30, 1884.

	1884.			1884.	
No.	Jan'y.	July.	No.	Jan'y.	July.
4049	"	"	11244	"	"
7126	"	"	11245	"	"
7127	"	"	11255	"	"
7225	"	"	11572	"	"
7248	"	"	11289	"	"
7397	"	"	11475	"	"
7442	"	"	11707	"	"
7509	"	"	11806	"	"
7570	"	"	11880	"	"
7784	"	"	11892	"	"
7819	"	"	11910	"	"
7922	"	"	11958	"	"
8044	"	"	11973	"	"
8059	"	"	11975	"	"
8227	"	"	12118	"	"
8232	"	"	12251	"	"
8324	"	"	12431	"	"
8420	"	"	12522	"	"

	Jan'y.	July.		Jan'y.	July.
8533	"	"	12628	"	"
8553	"	"	12866	"	"
8579	"	"	12918	"	"
8582	"	"	12939	"	"
8667	"	"	12974	"	"
8787	"	"	13010	"	"
8812	"	"	13059	"	"
8845	"	"	13060	"	"
8879	"	"	13066	"	"
8880	"	"	13123	"	"
8948	"	"	13124	"	"
8953	"	"	13211	"	"
8986	"	"	13212	"	"
9169	"	"	13217	"	"
9289	"	"	13238	"	"
9294	"	"	13272	"	"
9299	"	"	13300	"	"
9441	"	"	13420	"	"
9444	"	"	13726	"	"
9455	"	"	13792	"	"
9459	"	"	13810	"	"
9460	"	"	13817	"	"
9461	"	"	14052	"	"
9462	"	"	14374	"	"
9607	"	"	14429	"	"
9762	"	"	14707	"	"
9787	"	"	14709	"	"
9821	"	"	14758	"	"
9965	"	"	14828	"	"
10097	"	"	15393	"	"
10098	"	"	15997	"	"
10099	"	"	16031	"	"
10127	"	"	16221	"	"
10264	"	"	16263	"	"
10345	"	"	16270	"	"
10346	"	"	16308	"	"
10367	"	"	16377	"	"
10458	"	"	16419	"	"
11021	"	"	16641	"	"
11073	"	"	17057	"	"
11159	"	"	17058	"	"
11181	"	"	17068	"	"
11243	"	"			

21 Consol coupons, $30, tendered by R. L. Maury, att'y, Dec. 30, 1884.

	1884.			1884.	
No.	Jan'y.	July.	No.	Jan'y.	July.
17073	"	"	17452	"	"
17094	"	"	17478	"	"

	Jan'y.	July.		Jan'y.	July.
17101	"	"	17578	"	"
17102	"	"	17679	"	"
17118	"	"	17724	"	"
17121	"	"	17725	"	"
17137	"	"	18726	"	"
17159	"	"	17728	"	"
17160	"	"	17782	"	"
17219	"	"	17832	"	"
17221	"	"	17854	"	"
17222	"	"	17948	"	"
17234	"	"	17965	"	"
17262	"	"	17984	"	"
17268	"	"	18061	"	"
17306	"	"	18082	"	"
17326	"	"	18083	"	"
17358	"	"	18084	"	"
17404	"	"	18093	"	"
17407	"	"	18156	"	"
17408	"	"	18201	"	"
17414	"	"	18238	"	"

$15.

110	"	"	1044	"	"
240	"	"	1187	"	"
241	"	"	1446	"	"
286	"	"	1551	"	"
378	"	"	1559	"	"
470	"	"	1568	"	"
590	"	"	1712	"	"
688	"	"	1713	"	"
922	"	"	1748	"	"
976	"	"	1762	"	"
981	"	"	1958	"	"
982	"	"	1999	"	"
988	"	"	2016	"	"
1014	"	"			

22 Tendered by R. L. Maury, att'y.

	1884.		1885.		1884.		1885.
No.	Jan'y.	July.	Jan'y.	No.	Jan'y.	July.	Jan'y.
787	"	"	"	12844	"	"	"
1417	"	"	"	12904	"	"	"
2015	"	"	"	12938	"	"	"
2708	"	"	"	13048	"	"	"
2868	"	"	"	13092	"	"	"
3493	"	"	"	13823	"	"	"
3855	"	"	"	13840	"	"	"
4305	"	"	"	14109	"	"	"
4441	"	"	"	14717	"	"	"

	Jan'y.	July.	Jan'y.		Jan'y.	July.	Jan'y.
4465	"	"	"	14819	"	"	"
4798	"	"	"	14896	"	"	"
4905	"	"	"	15153	"	"	"
4940	"	"	"	16218	"	"	"
5865	"	"	"	16272	"	"	"
5866	"	"	"	13075	"	"	"
6020	"	"	"	14285	"	"	"
6494	"	"	"	14367	"	"	"
6814	"	"	"	14383	"	"	"
7631	"	"	"	14431	"	"	"
7642	"	"	"	14442	"	"	"
8035	"	"	"	14716	"	"	"
8104	"	"	"	15825	"	"	"
8518	"	"	"	16134	"	"	"
8817	"	"	"	16322	"	"	"
8952	"	"	"	16413	"	"	"
9483	"	"	"	16492	"	"	"
10035	"	"	"	16588	"	"	"
10119	"	"	"	16725	"	"	"
10349	"	"	"	17061	"	"	"
10614	"	"	"	17255	"	"	"
10713	"	"	"	17486	"	"	"
10915	"	"	"	17502	"	"	"
11296	"	"	"	17553	"	"	"
11573	"	"	"	17657	"	"	"
11651	"	"	"	17706	"	"	"
11684	"	"	"	17743	"	"	"
11955	"	"	"	17746	"	"	"
11956	"	"	"	18085	"	"	"
11957	"	"	"	18106	"	"	"
12122	"	"	"	18107	"	"	"
12196	"	"	"	18111	"	"	"
12486	"	"	"	18112	"	"	"
12701	"	"	"				

23 Tendered by R. L. Maury, att'y.

	$30.			$30.	
	1885.	1884.		1885.	1884.
No.	Jan'y.	July.	No.	Jan'y.	July.
104	"	"	10645	"	"
107	"	"	10688	"	"
349	"	"	10762	"	"
361	"	"	10849	"	"
637	"	"	10977	"	"
671	"	"	10978	"	"
819	"	"	10979	"	"
855	"	"	10980	"	"
864	"	"	11032	"	"
867	"	"	11033	"	"

	Jan'y.	July.		Jan'y.	July.
1075	"	"	11034	"	"
1568	"	"	11035	"	"
1614	"	"	11036	"	"
1830	"	"	11161	"	"
1930	"	"	11721	"	"
2095	"	"	11722	"	"
2585	"	"	11723	"	"
2586	"	"	11724	"	"
2587	"	"	11963	"	"
2588	"	"	12119	"	"
2871	"	"	12120	"	"
3124	"	"	12131	"	"
3686	"	"	12133	"	"
3929	"	"	12134	"	"
4325	"	"	12135	"	"
4406	"	"	12273	"	"
6405	"	"	12339	"	"
6641	"	"	12881	"	"
6643	"	"	13062	"	"
6857	"	"	13374	"	"
7313	"	"	13563	"	"
7344	"	"	13677	"	"
7409	"	"	14053	"	"
7413	"	"	14893	"	"
7613	"	"	15108	"	"
8027	"	"	15203	"	"
8249	"	"	15316	"	"
8250	"	"	16731	"	"
8569	"	"	17225	"	"
9088	"	"	17251	"	"
9194	"	"	17333	"	"
9232	"	"	17510	"	"
9446	"	"	17564	"	"
9505	"	"	17647	"	"
10013	"	"	17899	"	"
10437	"	"	18234	"	"
10485	"	"	18244	"	"

$15.

	1885.	1884.		1885.	1884.
No.	Jan'y.	July.	No.	Jan'y.	July.
153	"	"	909	"	"
378	"	"	1014	"	"
470	"	"	1019	"	"
568	"	"	1222	"	"
590	"	"	1415	"	"
788	"	"	1486	"	"
827	"	"	1712	"	"
842	"	"	1713	"	"
897	"	"	1730	"	"
898	"	"	1817	"	"

$15.

	Jan'y.	July.		Jan'y.	July.
899	"	"	1836	"	"
900	"	"	1837	"	"
901	"	"	1839	"	"
902	"	"	1840	"	"
904	"	"	1865	"	"
905	"	"	1958	"	"
906	"	"	2085	"	"
907	"	"	2396	"	"

24 Consol coupons tendered by R. L. Maury, att'y, January, 1885.

$30.

No.	No.	No.	No.
11159	13123	15997	17404
11181	13124	16031	17407
11243	13144	16221	17408
11244	13211	16244	17414
11245	13212	16263	17452
11255	13217	16270	17478
11289	13238	16308	17530
11475	13272	15377	17578
11572	13300	16419	17679
11638	13420	16641	17714
11707	13726	17057	17724
11806	13792	17058	17725
11880	13810	17068	17726
11892	13817	17073	17728
11910	14052	17077	17782
11958	14190	17094	17831
11973	14191	17101	17832
11975	14193	17102	17854
12118	14374	17118	17836
12251	14429	17121	17948
12431	14515	17137	17965
12522	14707	17159	17984
12581	14709	17160	18061
12628	14758	17219	18082
12866	14828	17221	18083
12919	15043	17222	18084
12939	15333	17234	18093
12974	15393	17262	18156
13010	15755	17268	18201
13059	15796	17306	18238
13060	15804	17326	
13066	15831	17358	

$15.

No.	No.	No.	No.
922	988	1551	1762
976	1044	1559	1999
981	1187	1568	2016
982	1446	1748	

25 EXHIBIT B, filed with the bill.

The Public Debt.

The following is a statement of the funding of the public debt of Virginia under the Riddleberger bill to January 31st, 1885:

Surrender to December 31, 1884	$6,269,329 83
Surrender since December 31, 1884	240,662 52
Total surrender	$6,509,992 35
New issue in Virginia 3 per cent. bonds to December 31st	4,148,577 46
New issue in Virginia 3 per cent. bonds since December 31	211,678 82
Total new issue	$4,360,256 28

Of the amount surrendered in January there was—

Of 10–40 coupon bonds	500 00
Of 10–40 coupons due July, 1882, and prior	6,823 50
Of 10–40 coupons due January, 1883, and subsequent	78,688 50
Of 10–40 registered bonds	43,500 00
Of interest on same	3,262 50
Of consol coupons due July, '82, and prior	11,998 00
Of consol coupons due January, '83, and subsequent, under mandamus of United States circuit court	66,132 00
Of 10–40 coupons due January, '83, and subsequent, under mandamus of United States circuit court	3,678 00
Black scrip	6,170 00
Of peeler coupons	2,496 00
Of other securities	17,414 02
Total surrender in January	$240,662 52

Of total amount surrendered to date there has been:

Of consol coupon bonds	20,000 00
Of consol coupons due July, '82, and prior	482,562 00
Of 10–40 coupon bonds	810,000 00
Of 10–40 coupon bonds due July, 1882, and prior	159,463 50
Of 10–40 coupon bonds due January, '83, and subsequent	156,582 00
Consol coupons of January, '83, and subsequent, under mandamus	311,247 00
10–40 coupons of January, '83, and subsequent, under mandamus	50,044 50
Total tax-receivable bonds and coupons	$1,989,899 00

Of 10–40 registered bonds	$164,300 00
Interest on same	8,212 50
Black scrip	262,350 26
Sterling certificates of 1871	75,772 50
Interest on same	40,391 60
Sterling coupon bonds (old)	557,000 00
Sterling coupons	251,515 38
Registered consol bonds	53,266 32
Registered pealer bonds	259,039 65
Consol and pealer interest	250,949 15
Pealer coupon bonds	957,100 00
Pealer coupons	543,326 00
Old coupon bonds	457,626 00
Old coupons	350,164 43
Old registered bonds	161,181 45
Interest on same	127,898 11
Total surrender	$6,509,992 35

Tax-receivable coupons paid for taxes on judgments under acts of January 14 and 26, 1882, to January 31, 1885	218,883 50
Amount of new Virginia 3 per cent. bonds purchased by the board of sinking fund commissioners under act of March 15, 1884	1,413,700 00
Amount expended by commissioners in purchase of the above bonds	798,490 20
Amount of interest due on above bonds to January 1, 1885	68,785 50
Amount of new 3 per cent. bonds turned over to sinking fund commissioners, and cancelled under acts of March 19th and August 23, 1884	492,805 50

26 And on the same day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 21st day of February, 1885, the following order was entered:

EDWIN PARSONS
vs. } 378. In Equity.
MORTON MARYE, Auditor, &c., *et als.*

This day come the complainant by counsel, & by leave of court filed his bill, alleging that irreparable injury will result to him, unless the court will interfere forthwith in his behalf, and moved the court to award him a preliminary injunction as prayed in the bill; and thereupon came the defendants, and waiving further notice, by leave of court first had and obtained, filed their demurrer in writing to the complainant's said bill, in which demurrer the complainant joined; upon consideration whereof, and after hearing arguments of counsel for all parties, the court doth overrule said demurrer.

And the defendants thereupon asked & obtained leave to file their pleas in abatement in writing to the jurisdiction of the court; to which pleas the complainant demurred, in which demurrer
27 the defendants joined; upon consideration whereof, and counsel for all parties being fully heard, the court doth sustain the said demurrer to said plea.

And thereupon the said defendants, by leave of court, filed their answer in writing; to which the complainant replied generally.

I. Upon consideration whereof, and after hearing argument for all the parties, the court doth adjudge, order, and decree that a preliminary injunction hereby awarded the complainant to enjoin and restrain the defendants, Morton Marye, auditor of the State of Virginia, Sam'l C. Greenhow, treasurer of the city of Richmond, A. L. Hill, treasurer of the city of Norfolk, V. G. Dunnington, treasurer of the city of Lynchburg, R. B. Munford, commissioner of the revenue for the city of Richmond, Charles W. Price, commissioner of the revenue for the city of Lynchburg, and Charles B. Langley, commissioner of the revenue for the city of Norfolk, their assistants, clerks, and agents, and each and every one of them, from refusing to receive and accept, without delay or demur, any of the coupons in the bill, and the exhibit therewith filed, mentioned and described, in full and complete payment, satisfaction, and discharge of any taxes,
28 license taxes, or assessments, or other dues, due the State of Virginia, by any tax-payer of or to the said State, or by her prescribed to be paid or to be deposited by him, who may tender the in payment, satisfaction, or discharge of the deposit in money required to be made with the said auditor or any of the said treasurers of the amount of the tax or assessment required by the acts of the General Assembly of Virginia, prescribing the mode of obtaining licenses to do business in said State, as a condition precedent to the issuance of any license, which payments and deposits shall be taken and accepted by the said defendants in the same manner, and to have precisely the same force and effect as if they had been made in the coin or currency specified in the said acts of the General Assembly.

II. And from refusing to execute and deliver forthwith to such tax-payer without delay or demurrer, and immediately upon his making such tender of the amount due by him as aforesaid, either wholly the coupons named and described in the bill and the Exhibit A therewith filed or partly therein, and the residue in money, his tax bill duly receipted, or to an applicant for a license tendering in like manner the amount of the tax or assessment thereon a certificate that such amount has been deposited with him
29 by the said applicant, which said receipt and said certificate are to be executed and given and received in precisely the same manner and to have precisely the same force and effect as if such payments or deposit had been made in the coin or currency specified in the acts of the General Assembly aforesaid.

III. And from refusing immediately, upon the presentation and receipt of such receipt or certificate by or from any applicant for such license, who shall have complied with all the requirements of

the laws of Virginia in respect of such application, save the payment or deposit of the tax or assessment thereon in money, as aforesaid, to grant and issue to such applicant the license applied for in precisely the same manner and to have precisely the same force and effect as if said payment or deposit had been made in the coin and currency specified in the acts of the General Assembly aforesaid.

IV. And from acting, doing, or proceeding, or refusing to act, do, or proceed in the premises, or in any manner whatsoever different from their usual course of doing, acting, or proceeding when such payments or deposits are made in the coin or currency
30 specified in said acts of the General Assembly, and the receipts therefor and the certificates of deposit thereof so state.

V. And it is ordered that the defendants, their assistants, clerks, and agents, and each and every one of them, shall from henceforward and until the further order of this court and without service of this decree upon them be required to observe and perform the same under penalties of a contempt.

But the complainant shall not have the benefit of the order until he or some one for him shall enter into bond before the clerk of the court with approved security in the penalty of $250, and conditioned to pay all costs and damages which may be awarded against him in case this injunction be dissolved, and by consent of parties it is ordered that this cause be set down for hearing on the 24th inst. at Richmond.

RO. W. HUGHES, *Judge.*

Richmond, 21st Feb., 1885.

The following are the defendants' demurrer, pleas in abatement, and answer, respectively, referred to in the foregoing order:

31 *Defendants' Demurrer to Complainant's Bill.*

These defendants, by protestation, not confessing all or any of the matters and things in the complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show—

1st. That it is apparent on the face of the bill that this honorable court cannot take cognizance of the matters and things set up therein as against these defendants, because it appears that they have no personal interest in the same, and that it is an attempt to make the State of Virginia a party to a suit through these defendants, so as to bind the State by the judgment and decision of the court in the case.

2d. Because the bill in this case seeks the specific performance or execution of a contract alleged to have been made by the State of Virginia in a suit to which she is not a party, but is brought against her officers, who, in refusing to receive coupons in payment of taxes, are merely obeying the positive law of the supreme political power of the State.

3d. Because the bill does not aver that the complainant is a tax-payer to the State, or that he owes to said State any taxes,
32 debts, or demands due the State for which said coupons are receivable; and these respondents are advised that in order to invoke the jurisdiction and aid of the courts the party suing must combine the character both of tax-payer and coupon holder.

4th. Because said bill does not aver and show that complainant has paid or tendered in money, under protest, his taxes or any other demands due the State to the proper officer, as required by the statute laws of Virginia.

5th. Because the said bill is both multifarious and obnoxious to the objection of misjoinder; because it asks relief in behalf of (1) complainant, as well as other tax-payers with whom he claims to have made arrangements for the transfer of his coupons; (2) because the treasurers and commissioners of the revenue of Richmond, Lynchburg, and Norfolk are joined with the auditor of public accounts of the State as parties defendant, although they represent separate and distinct territories and jurisdictions, separate and distinct tax-payers, and each treasurer and commissioner of the revenue is in no-wise connected with the business affairs of the others, making out a clear case both of misjoinder and multifariousness.

6th. Because although by the rules of equity the province
33 of an injunction is to prevent a threatened wrong, yet in this case it is sought to be substituted for the extraordinary remedy, mandamus, to compel the officers of the State to receive said coupons.

7th. Because the bill does not on its face show a proper case for the jurisdiction of a court of equity by the extraordinary process of injunction, the complainant having a plain and adequate remedy at law for the enforcement of his rights, if any he has.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants do demur thereto, and pray the judgment of this honorable court whether they or either of them shall be compelled to make any other or further answer to said bill, and they humbly pray to be herein dismissed, with their reasonable costs in this behalf expended.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples do certify that, in our opinion, the foregoing demurrer is well founded in point of law.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing demurrer is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

34 *Defendants' Plea No. 1.*

And the defendants in their own proper person come and defend the wrong and injury, &c., and say they ought not to be compelled to answer the said suit—

Because the bill in this case seeks the specific performance or execution of a contract alleged to have been made by the State of Virginia in a suit to which she is not a party, but is brought against her officers, who, in refusing to receive coupons in payment of taxes, are merely obeying the positive law of the supreme political power of the State.

And this they are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are well founded in point of law and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

35 *Defendants' Plea No. 2.*

And the defendants in their own proper person come and defend the wrong and injury, &c., and say they ought not to be compelled to answer the said suit.

That it is apparent on the face of the bill that this honorable court cannot take cognizance of the matters and things set up therein as against these defendants, because it appears that they have no personal interest in the same, and that it is an attempt to make the State of Virginia a party to a suit through these defendants, so as to bind the State by the judgment and decision of the court in the case.

And this they are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are well founded in point of law, and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

36

Defendants' Plea No. 3.

And the defendants in their own proper person come and defend the wrong, and injury, &c., and say they ought not to be compelled to answer the said suit—

Because the bill does not aver that the complainant is a tax-payer to the State, or that he owes to said State any taxes, debts, or demands due the State for which said coupons are receivable; and these respondents are advised that in order to invoke jurisdiction and aid in the courts, the party suing must combine the character both of tax-payer and coupon-holder.

And this they are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are well founded in point of law, and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clk.*

37

Defendants' Plea No. 4.

And the defendants in their own proper person come and defend the wrong and injury, &c., and say they ought not to be compelled to answer the said suit—

Because the bill does not on its face show a proper case for the jurisdiction of a court of equity, by the extraordinary process of injunction, the complainant having a plain and adequate remedy at law for the enforcement of his rights, if any he has.

And this they are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are

well founded in point of law, and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia.
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

38 *Defendants' Plea No. 5.*

And the defendants in their own proper person come and defend the wrong and injury, &c., and say they ought not to be compelled to answer the said suit—

Because said bill does not aver and show that complainant has paid or tendered in money, under protest, his taxes or any other demands due the State to the proper officer, as required by the statute laws of Virginia.

And this they are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are well founded in point of law, and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

39 *Defendant's Plea No. 6.*

And the defendants in their own proper person come and defend the wrong and injury, &c., and say they ought not to be compelled to answer the said suit—

Because, although by the rules of equity the province of an injunction is prevent a threatened wrong, yet in this case it is sought to substituted for the extraordinary remedy, mandamus, to compel the officers of the State to receive said coupons.

And this they are ready verify. Wherefore they pray judgment

whether this court can or will take further cognizance of the suit aforesaid; and they pray that the same may be quashed and abated.

We, F. S. Blair, attorney general of Virginia, and W. R. Staples, do certify that, in our opinion, the foregoing pleas (7 in number) are well founded in point of law, and true in point of fact, and are not interposed for delay.

F. S. BLAIR,
Attorney General of Virginia,
And W. R. STAPLES.

This day personally appeared before me, M. F. Pleasants, clerk of circuit court of the United States for the eastern district of Virginia, at Richmond, W. R. Staples, who made oath that the foregoing is not interposed for delay.

Witness my hand and seal, this 21 day of February, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

40 *Defendants' Answer.*

In the Circuit Court of the United States for the Eastern District of Virginia.

To the hon. judge thereof:

The joint and separate answer of Morton Marye, auditor of Va.; Samuel C. Greenhow, treasurer of Richmond city; R. B. Munford, com'r of revenue for Richmond city; A. L. Hill, treasurer of Norfolk city; C. B. Langley, com'r of revenue of Norfolk city; V. G. Dunnington, treasurer of Lynchburg, and Chas. W. Price, com'r of revenue of city of Lynchburg, to a bill exhibited in your honorable court against them by Edwin Parsons, a citizen of the State of New York.

These respondents, for answer to so much of the said bill as they are advised it is material for them to answer, answering, say, that they know nothing of the truth of the allegations made in said bill, touching the genuineness of the coupons for which this suit is brought nor of any other matter of fact relied on in said bill, and therefore they do not admit the same to be true in manner and form as alleged therein, but call on complainant for proof thereof as required by the statutes of Virginia.

These respondents state that neither they nor any collecting officer of the State of Virginia have any right to receive coupons in
41 payment of any taxes, debts, or demands due the State, except in the mode prescribed by the act of the 14th of January, 1882, and the act of the 26th of January, 1882, of the General Assembly of Va. below referred to, which said acts afford a plain and simple remedy by which the coupon holder may discharge his dues to the State.

Respondents further say that the act of the General Assembly of Va., approved 25th of February, 1884, found in Acts of 1883–4, which requires license taxes to be paid in gold, silver, United States Treasury notes or national bank notes only, withdrew from the officers of

the State, and the defendants in this suit, the power and means of carrying the said supposed contract under the funding act of 1870–71 into effect, or of complying with the prayer of said bill, without a violation of their oaths and their official bonds.

And respondents further say that under the statute aforesaid, that all persons engaged in any employment or profession, for the prosecution of which a license is necessary, *and* required to pay therefor the amount fixed by law in legal currency of the United States.

And respondents further aver that for the exercise of such privileges the State may justly impose as a condition precedent
42 such payment in United States currency.

And respondents, further answering, say that with respect to the school taxes and capitation taxes referred to in the bill, under and by virtue of the constitution of Virginia adopted prior to the funding act of 1870–71, the same were set apart and dedicated exclusively for public free-school purposes, and that the General Assembly of Va. had no constitutional power to divert said taxes from the said purposes to the payment of the public debt of the public creditors, or to any other object whatsoever.

And further, by the 113th section of an act of the said General Assembly, app'd March 15th, 1884, the said constitutional requirement was carried into effect, as will be seen by reference to said section.

And now having fully answered as far as they are advised it is material for them to answer, they pray to be herein dismissed with reasonable costs, &c.

DEFT'S,
By Counsel.

43 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Robert D. Ward, a notary public for said city, in the State aforesaid, do certify that M. Marye, auditor of Virginia, made oath before me that the statements in the foregoing answer are true, to the best of his knowledge, information, and belief.

Given under my hand, this 25th of February, 1885.

R. D. WARD, *N. P.*

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 25th day of February, 1885—

EDWIN PARSONS
vs. } 378. In Equity.
MORTON MARYE, Auditor, *et als.*

This cause, which has been heretofore docketed and set down for final hearing this day, by consent of parties, came on to be again heard upon the papers heretofore read, the argument of counsel herewith filed, that the affidavit of the complainant may be read as his said deposition, and the said affidavit, together with the coupons

in controversy described in the bill, and was argued by counsel.

44 Upon consideration whereof, the court doth adjudge, order, and decree, for reasons stated in writing and filed in this cause, that the preliminary injunction herein awarded the complainant on the 21st inst. be, and the same is hereby, made perpetual, and that the complainant recover of the defendants his costs about his suit in this behalf expended; and this decree is final; and the defendants craved an appeal from this decree, in open court, which is hereby allowed by the court.

RO. W. HUGHES, *Judge.*

Richmond, 25th Feb'y, 1885.

The following is the agreement of counsel referred to in the foregoing decree:

Agreement of Counsel.

It is agreed by the counsel for the defendants that the counsel for the complainant may take the affidavit of the complainant touching any matters of fact stated in his bill without further notice; said affidavit to have the same effect as if taken in the form of a deposition upon due notice and subject to all legal exception to which a deposition would be subject.

If said affidavit shall be taken and filed after the final de-
45 cree in the court and before the hearing in the Supreme Court, it shall be read and have the same effect in said Supreme Court as if it had been taken and filed before the final decree in this court.

F. S. BLAIR, *Atto. Gen.*
RICHARD L. MAURY.
WALTER R. STAPLES.

The following agreements of counsel are also filed as part of the record:

Agreements of Counsel.

It is agreed by and between the counsel for complainant and the counsel for the defendants in this case that any or all of the statutes and decisions of the court of Virginia bearing upon the matters in controversy may be read, used, and relied upon by either side in this court and in the Supreme Court of the United States, and said courts may take judicial notice thereof as effectually and fully as the courts of Virginia might do if this suit were pending therein.

In witness whereof, we hereto set our hands, this 25th day of February, 1885.

46 F. S. BLAIR, *Atto. Gen.*
WALTER R. STAPLES.
RICHARD L. MAURY,
For Complainant.

It is agreed by counsel for complainant and for defendants that complainant's demurrer to defendants' pleas need not be in writing

nor specify the grounds of demurrer, and that the demurrer and pleas of the defendants need not be sworn to by the parties, but the oath of counsel thereto shall be sufficient.

WALTER R. STAPLES.
RICHARD L. MAURY,
For Complainant.

The following is a copy of the bond filed on behalf of the defendants in this cause:

47 Circuit Court of the United States of America for the Eastern District of Virginia.

EDWIN PARSONS
vs.
MORTON MARYE, Auditor of Virginia, S. C. GREENHOW, Treasurer of Richmond City, and others.

Know all men by these presents, that we, Morton Marye, Isaac R. Barksdale, R. B. Munford, and Samuel C. Greenhow, are held and firmly bound unto Edwin Parsons, complainant, in the sum of five hundred dollars ($500.00), to be paid to the said Edwin Parsons, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 25th day of February, A. D. 1885.

Whereas the above-named Morton Marye, Isaac R. Barksdale, R. B. Munford, and Samuel C. Greenhow have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named Morton Marye, Isaac R. Barksdale, R. B. Munford, and Samuel C. Greenhow shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

MORTON MARYE. [SEAL.]
J. R. BARKSDALE. [SEAL.]
R. B. MUNFORD. [SEAL.]
S. C. GREENHOW. [SEAL.]

Sealed and delivered in presence of—
M. F. PLEASANTS, *Clerk.*

The above bond is approved.

RO. W. HUGHES, *Judge.*

48 The following opinion was filed in the above-entitled cause by Hon. Ro. W. Hughes, United States district judge, presiding:

Opinion of Hughes, J.

U. S. Circuit Court, Eastern District of Virginia, at Richmond, February 25th, 1885. In Equity.

EDWIN PARSONS
v.
MORTON MARYE, Auditor of Va.; SAM'L C. GREENHOW, Treasurer of the City of Richmond, Va.; A. L. Hill, Treasurer of the City of Norfolk; V. G. Dunnington, Treasurer of the City of Lynchburg; R. B. Munford, Commissioner of the Revenues of the City of Richmond, *et al.*

This bill sets out the history & provisions of the funding act of 1871, reciting that the bonds it authorized were issued, with coupons attached, receivable at and after maturity for all taxes, demands, and dues to the State, and that this receivability of the coupons for taxes constituted the chief value of the bonds. It alleges that a large number of creditors were induced to surrender their old bonds on the faith of the new because of this receivability of the
49 coupons in taxes, and that thereby a contract was made between the State and the holder of the new bonds; that the latter should have the right not only to tender the coupons directly in payment of taxes, but should also have the right to transfer them to any tax-payer of the State, with their quality of receivability annexed.

The complainant set forth that he is the owner of $28,000 of said coupons, past due and unpaid, cut by himself from genuine bonds issued under the funding act of 1871, and that they are genuine and receivable for taxes by their express tenor. He alleges that other coupons cut by himself from the same bonds have been pronounced genuine by a jury in the mode prescribed by the laws of Virginia, and have also been ascertained to be genuine by this court. He insists, therefore, that the coupons now in question are by every test genuine, valid, and legal, and entitled to be received according to their tenor in payment of all taxes due the State.

These averments imply that this complainant has held as
50 an investment of his own for a series of years the bonds from which the coupons in question were cut; that they have not been bought in market in speculation, and that he is now seeking to render these securities available by transferring them to tax-payers, to be used in payment of their dues to the State of Virginia. He alleges that this right to transfer them would make them worth to him 95 cents in the dollar.

The complainant alleges that Virginia has for a long time refused and still refuses to pay the coupons in money, and that she has, moreover, enacted certain laws intended to destroy their receivability in payment of dues to herself, to his own great damage and injury, and in violation of her contract with him in that respect.

He particularly complains that the State has passed certain acts of Assembly (see act to regulate, &c., February 7th, 1884, p. 120, Acts of 1883–'4; Act to amend and re-enact, &c., p. 189, Acts of 1883–'4;

and sections 5, 112, 113, & 114 of ch. 1 of the act for assessing taxes, &c., passed March 15, 1884, pp. 562, 603, and 604 of the Acts
51 of 1883–'4) forbidding the receipt of his coupons for license taxes, and providing that the auditor and commissioners of revenue shall not grant licenses until the applicant exhibits evidence that he has deposited the amount of the license taxes in gold, silver, and Treasury and national bank notes. And he avers that he has the right to have his coupons received in payment of license taxes whenever they may be tendered by any person owing such taxes, and claims the right to such process as may be necessary to require the officers charged with such duties to receive his coupons in payment of license taxes, and thereupon to issue licenses, precisely as if payment had been made in money itself.

He avers that he is the owner of the bonds from which the coupons now sued upon were cut, and that they were cut by himself from these bonds. He alleges that it is notorious and well known to him and the public that the coupons sued upon would not be received by the defendants if tendered, and, therefore, that an actual
52 tender would have been useless. He alleges that the last Legislature of Virginia, in the acts of Assembly above cited took away all remedy from tax-payers seeking to use coupons in payment of license taxes, school taxes, and capitation taxes, which together aggregate nearly one-half of the annual revenues of the State.

He sets forth that relying upon his right to transfer to those who are tax-payers of the State, he has made arrangements with sundry tax-payers to use the coupons in question in payment of their taxes and license taxes now due, and that by such arrangement he would receive payment in large part for his coupons: but that the tax collectors of the State refuse and the defendants refuse to accept the said coupons according to the terms of the contract.

He files with his bill a list of the coupons, amounting to $28,010, upon which it is founded, which identifies them by their numbers, letters, and dates.

He prays for an injunction against the defendants to restrain
53 them from refusing to receive the particular coupons thus identified. He also prays for a specified performance on defendants' part of the State's contract with himself, evidenced by these particular coupons, and for general relief.

The defendants file an answer, among other things setting up the acts of the General Assembly of Virginia, which require coupons to be verified by a jury, and denying that these particular coupons have ever been so verified. The answer does not deny that the coupons are genuine, and does not comply in that respect with the statute law of Virginia, page 1094 of the Code of 1873, chapter 171, section 39, which puts the burden of affirming the spuriousness of a signature on the defendant. Nor does the answer deny that the acts of Assembly above cited as passed at the session 1883–4 were enacted and forbid the use of coupons in the payment of taxes due the State for licenses, schools, and capitation dues.

Defendants also demur to the bill on grounds set out and certi-

fied to be sufficient by counsel. They also plead an abate-
54 ment to the jurisdiction of this court. They also answer, set-
ting out defenses to the bill.

After so many hearings of coupon cases in this court it is useless to go into the equities of the one at bar. The contract of the State with the holders of coupons like those under consideration cannot be denied. The genuineness of the particular coupons, $28,010 in nominal amount, as to which an injunction is asked for, is not denied, and must be assumed to be conceded.

It is the misfortune of the defendants in all this class of suits that they cannot deny on oath the genuineness of the coupons sued upon; and that the court upon all the rules of pleading, and by reason of section 39 of the 167th chapter of the Virginia Code, must take their genuineness as confessed. The Supreme Court of the United States declared in Antoni *v.* Greenhow that the legislation of Virginia relating to the verification of coupons in no manner shifts the burden of proof.

Nor is it worth while to advert to the provision of the national Constitution which forbids a State from passing any laws
55 violating or impairing the obligation of her contracts, or to show that such laws are unconstitutional, null, and void; nor is it necessary to show particularly the unconstitutionality of legislative acts of Virginia which in their practical effect operate to destroy or impair the contract specifically set out in this bill; nor need it be shown that the coupons now sued upon do evidence a contract between the State of Virginia and the complainant. That this is a valid, subsisting contract has in reference to similar coupons been declared by the Supreme Court of the United States in Hartman *vs.* Greenhow, 102 U. S., 672, and by the supreme court of appeals of Virginia in Antoni *vs.* Wright, 22 Grattan, 833, and by both courts in other cases, which need not be cited.

For the purposes of this case all these propositions may be assumed to be finally and irrevocably settled, and I shall confine myself to questions which are in some degree peculiar to the present suit, and which may be thought open still to discussion.

56 These are, first, whether this court has, as a Federal court, jurisdiction of the suit itself; and, if so, second, whether as a court of equity it has jurisdiction of the remedy sought to be employed.

The first is only another form of the question, whether we have jurisdiction as to the parties to the record. The complainant being a resident of New York, and the defendants residents of Virginia, we have jurisdiction as to the parties, unless the objection be valid, that the parties defendant here are sued as officers of the State, and that the real defendant is the Commonwealth of Virginia. If so, then we have no jurisdiction; for although Virginia, in the national Constitution, granted the right to be sued in the Federal courts in certain cases by the subjects of foreign countries or citizens of sister States, yet by the Eleventh Amendment she revoked that grant.

The question, therefore, is whether suits against the officers of a State, in respect to the discharge of their public duties, are, in all

cases, suits against the States themselves; and if not in all, then in what cases?

57 I do not think that the question of jurisdiction, as to parties in the case at bar, is any longer undecided in the Supreme Court. At the last term it decided the case of Cunningham *v.* The Macon and Brunswick Railroad Company, reported in 109 U. S., 446, in which it elaborately discussed the questions which confronts this court in the case at bar. The Supreme Court said:

"The failure of several of the States of the Union to pay the debts which they have contracted, and to discharge other obligations of a contract charter, when taken in connection with the acknowledged principles, that no State can be sued in the ordinary courts as a defendant, except by her own consent, has led, in recent times, to numerous efforts to compel the performance of their obligations by judicial proceedings to which the State is not a party. These suits have generally been instituted in the circuit courts of the United States, or have been removed into them from the State courts.

58 "In such suits the efforts have been made, while acknowledging the incapacity of those courts to assume jurisdiction of a State as a party, to proceed in such a manner against the officers or agents of the State government, or against the property of the State in their hands, that relief can be had without making the State a party.

"It may not be amiss to try to deduce some general principles sufficient to decide the case before us. It may be conceded as a point of departure unquestioned that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in limited cases, &c., &c.

"This principle is conceded in all the cases, and whenever it can be clearly seen that the State is an indispensable party to enable a court, according to the rules which govern its procedure to grant the relief sought, it will refuse to take jurisdiction. But in the desire to do that justice which, in many cases, the courts can

59 see will be defeated by an unwarranted extension of this principle, they have in some instances gone a long way in holding the State not to be a necessary party though some interest of hers may be more or less affected by the decision. A reference to a few cases may enlighten us in regard to that now under consideration.

1. "It has been held in a class of cases where property of the State, or property in which the State has an interest, comes before the court and under its control in the regular course of judicial administration, without being forcibly taken from the possession of the government, the court will proceed to discharge its duty in regard to the property. * * *

2. "Another class of cases is where an individual is sued *in tort* for some act injurious to another in regard to person or property, to which his defence is that he has acted under the orders of the government. In these cases he is not sued as or because he is the officer of the government, but as an individual, and the court is not ousted

of jurisdiction because he asserts authority as such officer.
60 * * * To this class belongs the recent case of United States *vs.* Lee, 106 U. S., 196 (the Arlington case), for the action of ejectment in that case is in its essential character an action of trespass, with the power in the court to restore the possession to the plaintiff as part of the judament; and the defendants, Strong and Kaufman, being sued individually as trespassers, set up their authority as officers of the United States, which this court held to be unlawful, and therefore insufficient as a defence. * * *

3. "A third class, which has given rise to more controversy, is where the law has imposed upon an officer of the government a well-defined duty in regard to a specific matter not affecting the general powers or functions of government, but in the performance of which one or more individuals have a distinct interest capable of enforcement by judicial process. * * *

"In all such cases, from the nature of the remedy by mandamus, the duty to be performed must be merely ministerial, and must involve no element of discretion to be exercised by the officer.
61 It has, however, been much insisted on, that in this class of cases, where it shall be found necessary to enforce the rights of the individual, a court of chancery may, by a mandatory decree, or by injunction, compel the performance of the appropriate duty, or enjoin the officers from doing that which is inconsistent with that duty, and with the plaintiff's right in the premises. Perhaps the strongest assertion of this doctrine is found in the case of Davis *vs.* Gray, 16 Wallace, 203. In that case, the State of Texas having made a grant of the alternate sections of land along which a railroad shold be located, and the railroad company having surveyed the land at its own expense, and located its road through it, the commissioner of the State land office and the Governor of the State were, in violation of the rights of the company, selling and delivering patents for the sections to which the company had an undoubted vested right. The circuit court enjoined them from so doing, which was affirmed in this Court. * * *
62 It is clear that in enjoining the Governor of the State in the performance of one of his executive functions, the case goes to the verge of sound doctrine, if not beyond it; and that the principle should be extended no further. Nor was there in that case any affirmative relief granted by ordering the Governor and land commissioner to perform any act towards perfecting the title of the company.

"The case of the Board of Liquidation *v.* McComb, 92 U. S., 531, is to the same effect. The Board of Liquidation was charged by the statute of Louisiana with certain duties in regard to issuing new bonds of the State in place of old ones which might be surrendered for exchange by the holders of the latter. The amount of the new bonds was limited by a constitutional provision. McComb, the owner of some of the new bonds already issued, filed his bill to restrain the board from issuing that class of bonds in exchange for a class of indebtedness not included within the purview of the statute,

on the ground that his own bonds would thereby be rendered
63 less valuable. This Court affirmed the decree of the circuit court enjoining the board from exceeding its power in taking up by the new issue a class of State indebtedness not within the provisions of the law on the subject. In the opinion in that case the language of Mr. Justice Bradley tersely thus expresses the rule and its liquidations:

"'The objections to proceeding against State officers by mandamus or injunction are, first, that it is in effect proceeding against the State itself; and, second, that it interferes with the official discretion vested in the officers. It is conceded that neither of these can be done. A State, without its consent, cannot be sued as an individual, and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter.'

"But it has been settled that where a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain a personal injury by such refusal may have a mandamus to compel performance; and when
64 such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it.

"It is believed that this is as far as this Court has gone in granting relief in this class of cases. * * *

"On the other hand, in the case of Louisiana *v.* Jewel and Elliott *v.* Wiltz, 107 United States, 711, very ably argued and very fully considered, the Court declined to go any further. * * * The short statement of the reason for its judgment in those cases is, that as the State could not be sued or made a party to such proceeding there was no jurisdiction in the circuit court, either by mandamus at law or by a decree in chancery, to take charge of the treasury of the State, and seizing the hands of the auditor and treasurer, to make distribution of the funds found in the treasury in the manner which the court might think just. * * *

"We think the foregoing cases mark with reasonable pre-
65 cision the limit of the power of the courts in cases affecting the rights of the State or Federal Governments in suits to which they are not voluntary parties.

"In actions at law of which mandamus is one, when an individual is sued * * * in regard to a duty which he is personally bound to perform, the government does not stand behind him to defend him. If he has the authority of law to sustain him in what he has done, like any other defendant, he must show it to the court and abide the result. In either case the State is not bound by the judgment of the court; and, generally, its rights remain unaffected. It is no answer for the defendant to say, I am an officer of the government and acted under its authority, unless he shows the sufficiency of that authority. Courts of equity proceed upon different principles in regard to parties," &c., &c.

After this careful review of the decisions the Court said that in the case before it, Georgia was an indispensable party, and that, as the

object of the suit was to dispossess her of a railroad of which
66 she had both title and actual possession, the suit was not one of which it could retain jurisdiction.

The reasoning of the Supreme Court in this case of Cunningham *v.* Railroad Company, really Cunningham *v.* Georgia (for the State herself was the railroad company), settles in advance the case pending before it from Virginia of Allen and Hamilton *v.* Baltimore and Ohio Railroad Company, and makes it reasonably certain that, at least on the question of jurisdiction as to parties, it will affirm the ruling of Judge Bond and reverse my own.

It settles also the case at bar, for the granting of a preliminary injunction here is by no means as extreme an exercise of jurisdictional power as there was in the Texas case, where a Federal court arrested the hand of the Governor and land commissioner while engaged in violating a legislative contract, or as there was in the Louisiana and McComb case where another Federal court, in order to prevent an indirect and contingent depreciation of com-
67 plainant's bonds, forbade the State's financial board from issuing bonds which they deemed, but which the court denied, that they had a right to issue; or as there was in the Arlington case, where this court, in which I now sit, gave judgment against officers of the army of the United States, holding for the United States, one of them in charge of a cemetery for Union soldiers—the property in controversy being the patrimony of the Lees, and possession of it sought by a general of the Confederacy.

Compared with those cases the one at bar, involving $28,010 in nominal value of dishonored coupons, is not of superior importance, I think from what itself has said that there can be no reasonable doubt entertained as to what the Supreme Court's views are on the subject of suits against officers of States. That Congress is of opinion that the revenue officers of the States may be "enjoined and stayed" in their collections is shown by the terms of section
68 949 of the United States Revised Statutes, from which I have quoted.

The question, stated in syllabus form, is this: A public creditor who does not ask that money be taken out of the treasury or property out of the possession of the State has a right under a public statute to the performance in his behalf of an act of a public officer. That officer sets up another public statute which forbids the performance of that act, but which the public creditor insists is unconstitutional, null, and void.

This question is brought before a court for decision by the public creditor, who makes the officer alone party defendant to his suit. The question is whether the officer must obey the statute which commands or the statute which forbids the act sought by the creditor. It is a question for judicial decision; and as the act sought is merely ministerial, the weight of judicial authority is that the State is not a necessary party to the suit. Such is the case at bar.

By setting out on the face of the coupons a contract to
69 receive them in discharge of taxes, it would seem to have been the intention of the Virginia Legislature of 1871, in the

event that this contract should be impaired by subsequent legislation, to give the Federal courts jurisdiction to enforce it. And by making the coupons self-collecting in taxes it would seem to have been the object of the same Legislature to make the reception of the coupons for taxes a mere ministerial duty of the revenue officers of Virginia, the performance of which might be enforced by the courts in proceedings against the officers, to which the State would not be a necessary party.

If the coupons evidenced simply an obligation of the State to pay money, then it would be out of the power of the courts in proceedings against revenue officers alone to take money out of the public treasury for the purpose of paying the coupons.

This difference between a coupon calling for money and a coupon receivable in the payment of taxes, affords a good illustration of the difference between a suit against a public officer in which the
70 State is a necessary party defendant and a suit in which the officers only needs to be sued.

The case at bar is one of latter class.

I come now to the question whether this court, having jurisdiction as to parties, has, as a court of equity, jurisdiction of the remedy, and may grant the injunction prayed for by the complainant. Assuming, from the condition of the pleadings, that the coupons described in the bill are genuine, and that complainant has transferred them to tax-payers with the quality of receivability guaranteed, the remaining question is simply one of the jurisdiction of equity as to the remedy applied for. And let it be premised that an actual tender of the coupons described in the bill to the revenue officers of the State, and their refusal to receive them, were not necessary conditions precedent to entitle complainant to bring this suit; it having been publicly made known by the authorities of the State in numerous ways that the coupons would not be received in payment of taxes according to their tenor.

71 The public ratification made a tender useless; the law not requiring any one to do a vain thing. Lacey *v.* Irwin, 18 Wall., 549.

If the writ of mandamus is, on general principles, the proper one in this case, it must be observed that it is taken away from the complainant by the act of Assembly of January 26, 1882, and by the acts of 1884, relating to licenses.

Mandamus being a remedy at law, and the 914 section of the United States Revised Statutes having conformed the practice in the courts of the United States in common-law cases to that employed in the courts of the United States, in which they are respectively held, the statutes of Virginia, which take away mandamus in coupon cases in the State courts, take it away in those of the United States. Harvey & Blair *vs.* Virginia, 8 Virginia Law Journal, 400.

In that case I also held that the right of a tax-payer to sue for the purpose of verifying coupons offered in payment, which was
72 given by the third section of the act of Assembly of January 14th, 1882, (coupon killer, No. 1,) Acts Assemby of Va., 1881, '2, pp. 10, 11, was taken away as to license taxes by the 114th section

of the act of Assembly of March 15th, 1884, (see Acts of Assembly of 1883, '4, p. 604,) which repealed the remedy by verification of coupons.

And, therefore, complainants, having no remedy at law, and being otherwise remediless, resorts to equity, and applies here for what is known in English and American jurisprudence as a mandatory injunction, which is the counterpart in equity of a mandamus at law.

Must we go into the elementary books to find warrant for such a process? Jeremy, in his "Equity Jurisdiction," says: "An injunction is a writ framed according to the circumstances of the case, commanding an act which the court regards essential to justice, or restraining an act which it considers contrary to equity and good conscience."

The mandatory injunction may be in the direct form of
73 command, or in the indirect form of prohibiting the refusal to do an act to which another has a right. It may be used against public officers.

High says, in section 1308, "the preventive jurisdiction of equity extends to the acts of public officers, and will be exercised in behalf of private citizens who sustain such injury at the hands of those claiming to act for the public, as is not susceptible of reparation in the ordinary course of proceeding at law." Indeed, section 949 of the United States Revised Statutes shows that the Federal courts may enjoin and stay the revenue officers of the States. Such was the express ruling of the Supreme Court, as already quoted, in the case of Board of Liquidation *v.* McComb.

It were useless to cumber this opinion with as profuse a citation of authorities as might be made in support of injunctions mandatory in character, forbidding public officers or other defendants to refuse the performance of duties which citizens may rightfully demand at their hands. Very many authorities for such pro-
74 cess are cited in the brief of counsel for complainant, embracing cases from the English courts, from the courts of the States of this Union, and from our Federal courts, and I need not repeat the citations here. The printed brief does not contain the case of Brooke *vs.* Martin, 6 Munford, 306, in which the Virginia court of appeals enjoined the defendant to permit the complainant to have the benefit of a covenant entered into by the defendant.

I will add a few citations from decisions of the Federal courts: In the case of Coe & Wilson *vs.* The Louisville and Nashville Railroad Company, 3 Federal Reporter, 775, Judge Baxter, United States circuit judge, issued an order enjoining defendant from refusing to comply with an obligation arising upon a contract. In the case of The Denver and New Orleans Railroad Company *vs.* The Atchison, Topeka and Santa Fe Railroad Company, 15 Federal Reporter, 650, Judge Hallett, circuit judge, McCrary concurring, after
75 elaborate argument and an extended citation of precedents, made a decree of the same character. In the case of The Baltimore and Ohio Railroad Company *vs.* The Adams Express Company, 22 Federal Reporter, 404, a like injunction forbidding the refusal of a duty enjoined by contract was granted, Judges Bond and

Morris sitting. These and other like orders of Federal courts in other cases had been pointedly sanctioned by what the Supreme Court had said in the case of Board of Liquidation *vs.* McComb.

In the light of all the authorities on the subject, we do not think there is any doubt of the power of a court of equity, as a part of its general jurisdiction, to grant injunctions mandatory in character.

The real objection to the remedy in the present suit is, that the preliminary injunction is equivalent to a final decree, and that the defendants were, therefore, as to the preliminary injunction, deprived of the benefit of plenary proceedings, which, in general, is a
76 matter of right. But this results from the character and subject of the contract, the benefit of which is sought by this suit. In making the contract of the tax-receivable coupon, the State virtually waived the benefit of plenary proceedings in suits against her officers to enforce it in cases wherein the genuineness of the coupons is not put in issue. This contract would be worthless to the taxpayer if he could not use the coupon at the time the tax was due; and if the right to use it is denied him just when the collector applies for the tax under the laws of the State, its value for that purpose is destroyed, or by the use of it being postponed is seriously impaired. In agreeing that it shall be so used, it seems to us that the State has waived her right to a plenary defence in all suits for specific performance of the contract in which she does not deny the genuineness of the coupon. We are well aware of the sweep-
77 ing importance to the State of the principle on which the case at bar proceeds, and earnestly desire that the question shall be carried to the Supreme Court to be dealt with there.

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

I, M. F. Pleasants, clerk of the circuit court of the United States for eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause therein named, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 2nd day of March, 1885.

[SEAL.] M. F. PLEASANTS, *Clerk.*

Endorsed on cover: E. Virginia C. C. U. S. No. 1278. Morton Marye, auditor of the State of Virginia, Isaac R. Barksdale, *et al.*, appellants, *vs.* Edwin Parsons. Filed 10th March, 1885.

114-325

Supreme Court of the United States.

MARCH, 1885.

MORTON MARYE, Auditor of Public Accounts of Virginia, and others,

vs.

EDWIN PARSONS.

BRIEF OF ATTORNEY-GENERAL OF VIRGINIA FOR THE APPELLANTS.

114-325

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IN THE

Supreme Court of the United States.

MORTON MARYE, Auditor of Public Accounts of Virginia, and others,

vs.

EDWIN PARSONS.

BRIEF OF ATTORNEY-GENERAL OF VIRGINIA FOR THE APPELLANTS.

STATEMENT.

This was a bill brought by appellee, in the United States Circuit Court for the Eastern District of Virginia, against appellants, in which he averred that he is the holder of coupons, detached by himself from genuine bonds of the State of Virginia, issued under her Funding act of 1870-1; that said coupons are tax-receivable, and past due; that he has made arrangements with various persons who desire licenses of various kinds, &c., from the State, that they will receive the same. And the bill, therefore, prays for a preliminary, restraining order in his behalf against the appellants, restraining the Auditor of Virginia, the treasurers and commissioners of the revenue for the three cities named in bill, from refusing to receive said coupons in payment of said taxes; and for other relief.

The preliminary, restraining order was granted in accordance with the prayer of the bill, and thus said officers were enjoined from refusing to receive said coupons.

The appellants defended said suit. They appeared, demurred to said bill, pleaded to the jurisdiction of the Court, &c., and

answered the said bill; and on a final hearing of the cause, the said injunction-order was made final.

For further statements of facts of case, reference is made to the record; but it is believed foregoing will suffice.

The Law.

The very recent decisions of this honorable Court, in vols. 107 and 109 U. S. R., touching the suability of States or their officials by public or private creditors, will very much simplify the presentation of this case, and do to a great extent supersede the necessity of any elaboration of the points implicated in this controversy.

It is believed that the learning contained in those decisions is equally applicable to the case at bar. And those decisions have examined, questioned, limited, and defined many of the very cases relied on by appellee and others who maintain the proposition that States, *in eo nomine*, and through her officers, can be brought into court and ~~implicated~~, like individuals, and hence the brevity of this note of argument.

To hold that a State cannot be sued *directly*, but that she may be sued *through her officers*, would present the anomaly of a principal being exempt from suit in person, and yet liable thereto through his agent; and would be a forcible illustration of stopping wrong at the bung, but spilling justice at the spigot.

It is now well-established law, that a sovereign State cannot be sued at all, except by her own consent, and that she has the right to designate the forum in which she will be sued, and the procedure or remedy in such cases.

This proposition underlies the case at bar.

Virginia has consented to be sued in her own courts and by remedies she has prescribed, and she can be sued in no other tribunal and by no other procedure.

In this case the said coupons were not verified to be genuine by a verdict of a jury and the judgment of the Court, as required by either the act of 14th January, 1882, or that of 26th of January, 1882, found in Acts of 1881-'82, the first of which acts was declared to be constitutional, and to furnish a complete remedy to the tax-payers, by the Supreme Court of the United States in

Antoni *vs.* Greenhow, 107 U. S. R., 769; and the later act, of the 26th January, 1882, was in effect declared to be constitutional and to afford a sufficient remedy by the Supreme Court in the case of Tennessee *vs.* Sneed, 96 U. S. R., 71, where a similar bill from Tennessee was considered along with one from which the act of the 14th of January was patterned; that the said suit is an invasion of the sovereign rights of the State of Virginia; that the said petition or bill is a legal nondescript, unauthorized by any known rules of pleading or practice, and, as before stated, seeks to compel the executive officers and ministerial officers of the State to violate the plain law of the State, although they have taken an oath of office and executed a bond with sureties that they would obey and enforce its constitutional laws.

At the time the coupons were issued under the act of 1870–'71 no statutes or judicial decision had authorized a suit against the State of Virginia in the Courts of the United States by a citizen of another State.

Because the money in the State treasury of Virginia is her own property, held by her officers, not in trust for her creditors, nor as their agents, but as her servants; and that the Federal Courts cannot control such State officers in the administration of State finances, and thus oust the jurisdiction of the political power of the State.

The act of the General Assembly of Virginia, approved 15th day of March, 1884, found in Acts of 1883–'84, which requires license-taxes to be paid in gold, silver, United States treasury or national-bank notes only, withdrew from the officers of the State and the defendants in this suit the power and means of carrying the said supposed contract, under the Funding act of 1870–'71, into effect, or complying with the prayer of said bill or petition, without a violation of their oaths and bonds of office.

1st. It is apparent on the face of the bill that the honorable Court should not have taken cognizance of the matters and things set up therein as against these defendants, because it appears that they have no personal interest in the same, and that it is an attempt to make the State of Virginia a party to a suit through these defendants, so as to bind the State by the judgment and decision of the Court in the case.

2d. Because the bill in this case seeks the specific performance

or execution of a contract alleged to have been made by the State of Virginia, in a suit to which she is not a party, but is brought against her officers who, in refusing to receive coupons in payment of taxes, are merely obeying the positive law of the supreme political power of the State. (Louisiana *vs.* Jumel, 107 U. S. R., 711; Antoni *vs.* Greenhow, 107 U. S. R., 769, and cases cited, p. 775, *et seq.;* Cunningham *vs.* Macon and Brunswick R. R. Co., 109 U. S. R., 446, and cases therein cited and approved.)

3d. Because the bill does not aver that the complainant is a tax-payer to the State, or that he owes to said State any taxes, debts, or demands due the State for which said coupons are receivable; and in order to invoke the jurisdiction and aid of the courts, the party suing must combine the character both of tax-payer and coupon-holder. (See Virginia acts 14th Jan., 1882, and 26th Jan., 1882.)

4th. Because said bill does not aver and show that complainant has paid or tendered in money, under protest, his taxes or any other demands due the State to the proper officer, as required by the statute laws of Virginia, passed 14th Jan. and 26th Jan., 1882.

5th. Because the said bill is both multifarious and obnoxious to the objection of misjoinder; because it asks relief in behalf of (1) complainant as well as other tax-payers, with whom he claims to have made arrangements for the transfer of his coupons; (2) because the treasurers and commissioners of the revenue of Richmond, Lynchburg, and Norfolk are joined with the Auditor of Public Accounts of the State, as parties defendant, although they represent separate and distinct territories and jurisdictions, separate and distinct tax-payers, and each treasurer and commissioner of the revenue is in no wise connected with the business affairs of the others—making out a clear case both of misjoinder and multifariousness. (Brinkerhoff *vs.* Brown, 6 Johns. Chy. R., 139; Fellows *vs.* Fellows, 4 Cowan, 682; Dilly *vs.* Dorg, 2 Vesey, Jr., 486; 1 Daniel Chy. Pr., 334 to 342, and notes; 14 Peters, 210; 1 Woodb. and M., 381.)

6th. Because, although by the rules of equity the province of an injunction is to prevent a threatened wrong, yet in this case it is sought to be substituted for the extraordinary remedy—mandamus, to compel the officers of the State to receive said

coupons. (Story's Equity Juris., sec. 921, *et seq.;* High on Inj., secs. 695-737; 2 Daniel Ch. Pr., p. 1620 to 1628-1650-6.)

7th. Because the bill does not, on its face, show a proper case for the jurisdiction of a court of equity, by the extraordinary process of injunction, the complainant having a plain and adequate remedy at law for the enforcement of his rights, if any he has, under the Virginia acts of 14th January, 1882, and 26th January, 1882. (Antoni *vs.* Greenhow, *ante.*)

Respectfully,

F. S. BLAIR,

Attorney-General of Virginia.

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FILED.
MAR 16 1885
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

MORTON MARYE ET AL.,
Appellants,

against

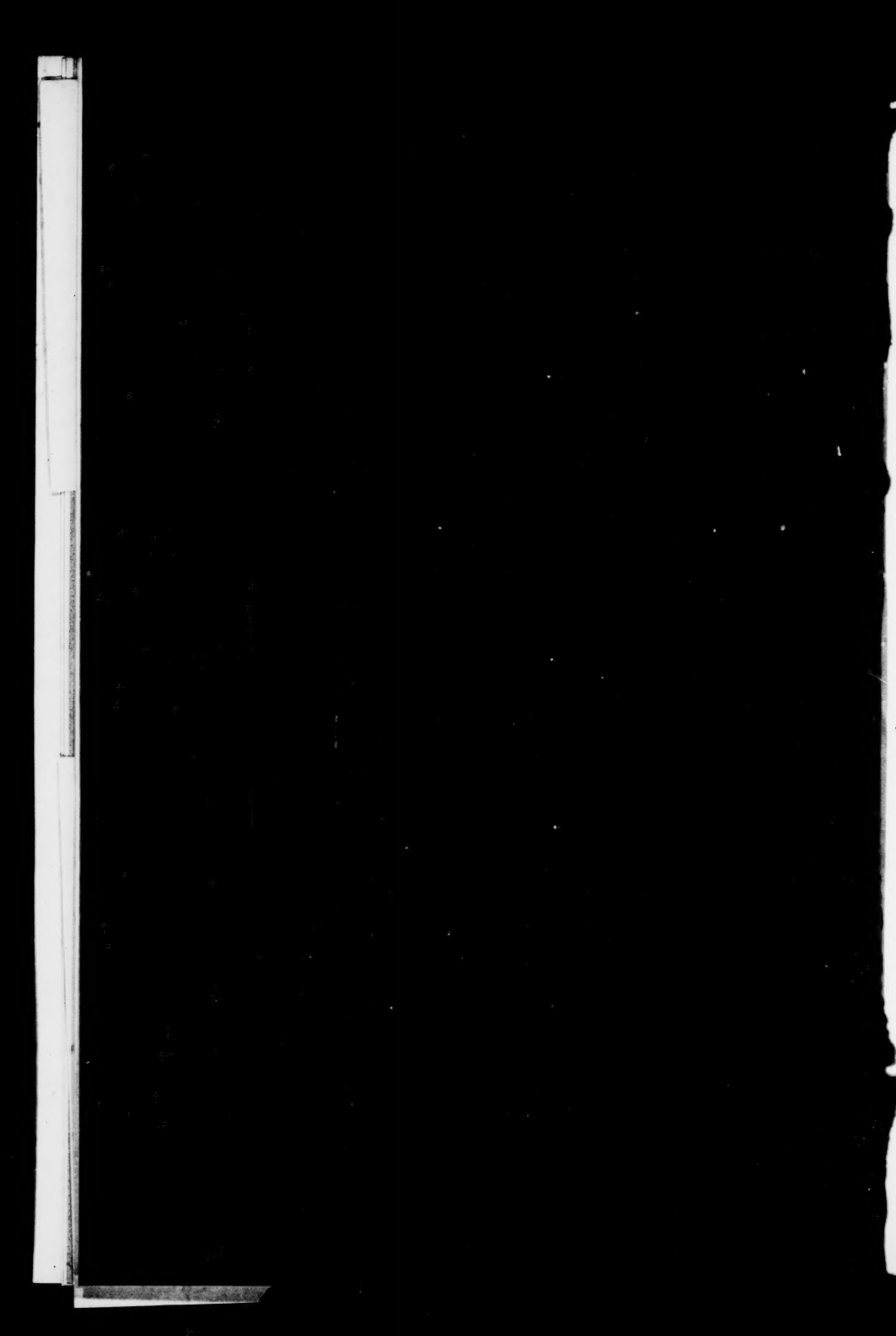
EDWIN PARSONS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR RESPONDENT.

DANIEL H. CHAMBERLAIN,
Of Counsel.

C. G. BURGOYNE'S "Quick" Print, 146-150 Centre St.



Supreme Court of the United States,

OCTOBER TERM, 1884.

No. .

MORTON MARYE, Auditor, ET AL.,
Appellants,

AGAINST

EDWIN PARSONS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

This is a bill in equity brought by a citizen of the State of New York against certain State officers of the State of Virginia, who are charged with certain duties connected with the collection of taxes in that State.

The bill, after setting forth the issue of the bonds of March 30, 1871, and the contract therein contained to receive them "for all taxes, debts, dues and demands due the State," avers that the contract of the State was, *first*, to pay the sum named in the coupon, on the day named; or, failing in this, *second*, that the coupon-holder should have the right to transfer the coupon to any person owing taxes or debts of any kind to the State, and that the coupons should at all times have the quality of receivability for all taxes and State dues in whosoever hands they should come; that he is the owner

of $28,000 of coupons cut from the bonds of March 13, 1871, which were by himself cut from bonds of the same class, which are genuine legal coupons, legally receivable for all taxes and State dues, and that other coupons cut from the same bonds have been proved to be genuine according to the methods prescribed by the laws of Virginia, and have been decreed by the United States Circuit Court to be legal coupons and entitled to be received and funded into new bonds of the State.

That the State now refuses to receive the coupons for taxes except under such conditions, obstructions, delays and multiplicity of suits as to preclude almost entirely the use of coupons by taxpayers, to the great detriment and injury of the complainant; that the State having refused to pay the coupons in money, he has the right to demand the performance of the portion of the contract obliging the State by her tax collector to receive the coupons for taxes and State dues when tendered by any tax-payer or debtor of the State. That confiding in his contract within the State, he has heretofore made arrangements with tax-payers of the State to tender his said coupons in payment of their taxes, whereby he will receive a large part of their face value; but that if the tax collector shall refuse to receive them for taxes and the tax-payer be compelled to resort to long and expensive suits, as now required by the laws of the State, he will be deprived of the benefit of his said arrangements with the taxpayers to tender the same; that the State has passed an act absolutely forbidding the receipt of coupons for license taxes, and providing that her Auditor shall not grant any licenses until the applicant therefor shall exhibit a certificate in writing from said Auditor or from the county or corporation treasurer, that the applicant has deposited with him the amount of said license tax in gold, silver, United States Treasury notes or national bank notes.

The bill avers that, of the defendants, Marye is the Auditor of Virginia, and as such, that it is his duty to receive and receipt for certain taxes due the State, and also certain license taxes, and to issue certain licenses; that Greenhow is treasurer of the City of Richmond; Mumford commissioner of revenue for the City of Richmond; that Hill is treasurer for the City of Norfolk, and Langley commissioner of revenue for the City of Norfolk; that Dunnington is treasurer of the City of Lynchburg and Price commissioner of revenue of the City of Lynchburg, and that it is the duty of these defendants to grant certain licenses and receive and certify the deposits of applicants for licenses in the said cities respectively, and that each of the said officers refuse to receive the above-named coupons in payment of taxes, or to recognize or permit in any manner their deposit for said license taxes.

The complainant then prays that the said defendants be required to specifically perform the contract embodied in the coupon, and to accept said coupons for all taxes and license taxes.

To this bill the defendants demurred on the grounds: *First*, that the suit is against the State; *second*, that the suit seeks the specific performance of a contract alleged to have been made by the State, in a suit to which the State is not a party, but in which the defendants are State officers obeying the laws of the State; *third*, because the bill does not aver that the complainant is a taxpayer of the State; *fourth*, because the bill does not aver or show that the complainant has tendered his taxes in money under protest, as required by the laws of Virginia; *fifth*, because the bill is multifarious and obnoxious to the objection of misjoinder, (1) because the complainant asks relief in behalf of himself and other taxpayers with whom he claims to have made arrangements for the transfer of his coupons; (2) because the defendants, Treasurers

and Commissioners, are joined with the Auditor of the State as parties defendant, though they are officers of separate and distinct territories and jurisdictions; *sixth*, because injunction is sought to be substituted for *mandamus; seventh*, because the complainant has an adequate and plain remedy at law.

A preliminary injunction having been granted on the bill, upon hearing, on the 20th February, 1885, the cause came on for final hearing on the day of February, 1885, whereupon the said preliminary injunction was made perpetual and the said decree final.

From this decree the present appeal is taken.

I.

In this case, as in the other coupon cases, we can assume, without argument, as already settled by this Court:

First. That these coupons represent and evidence a contract between the holder and the State, that the latter will receive the coupons when tendered for taxes.

Second. That any act of legislation which forbids or prevents the receipt of these coupons for taxes when tendered, is unconstitutional and void.

II.

It may also be said that this case, being an application to the equitable powers and jurisdiction of a United States Court is not affected by any State legislation.

In *Payne vs. Hook*, 7 Wall., 425, it was said:

"We have repeatedly held that the jurisdiction of

the Courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States, which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power." *Hyde vs. Stone*, 20 How., 175; *Suydam vs. Broadnax*, 14 Peters, 67; *Union Bank vs. Jolly's Adm'r*, 18 How., 503. "If legal remedies are sometimes modified to suit the changes in the laws of the States, and the practice of their Courts, *it is not so with equitable.* The equity jurisdiction conferred on the Federal Courts is the same that the High Court of Chancery possesses; *is subject to neither limitation or restraint by State legislation*, and is uniform throughout the different States of the Union." (*Green's Adm'r vs. Creighton*, 23 How., 90; *Robinson vs. Campbell*, 3 Wheat., 212; *United States vs. Howland*, 4 Wheat., 108; *Pratt et al. vs. Northam et al.*, 5 Mason, 95.)

* * * "The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle to a particular case must depend on the character of the case, as disclosed in the pleadings.

"It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and efficient to the ends of justice, and its prompt administration, as the remedy in equity."

Boyce's Executors vs. Grundy, 3 Peters, 210.

III.

It may be said, in the next place, that the coupons involved in this case must be treated as genuine, legal coupons entitled to be received for taxes and all State dues. Such is the untraversed averment of the bill.

Two questions now arise:

FIRST. Is this *a suit against the State*, in the legal sense of the words?

SECOND. Does the bill state a case warranting equitable relief as prayed for, and decreed by the Court below?

IV.

1. Is this *a suit against the State?*

Without going fully again over the ground examined in *Allen, Auditor, et al., vs. Baltimore & Ohio Railroad Co.*, it may be said that, of the recent important cases in this Court, in which jurisdiction has been denied, because the suits, though in form against State officers, were, in substance, *against the State;*—

Cunningham vs. R. R. Co., 109 U. S., 769, was a case in which it was sought to take property actually in the possession of the State, under a title of purchase, and transfer it to other persons. *It was the State's property alone which was in suit.*

In *Louisiana vs. Jumel*, 107 U. S., 711, this Court refused jurisdiction, because, although the suit was in form a suit against the State officers only, yet, in substance, it attempted to assume such control over the State's funds and treasury, requiring the payment of funds in the treasury to objects not allowed by the State laws, that it was, in a legal sense, *a suit against the State.*

Certainly, the features which gave their character to those cases, do not appear here.

On the other hand, in *Antoni vs. Greenhow*, 107 U. S., 769, the suit was against the State officer alone.

Here the Court made no objection to the suit on the ground that it was a suit *against the State*, but conceding or assuming that there was no jurisdictional difficulty, held that the suit could not be maintained because the remedy there sought had been taken away by the Legislature.

Antoni vs. Greenhow is authority, therefore, for the propostion that a suit against a State officer to enforce a contract is not *a suit against the State*.

The line of cases in this Court in which suits against State officers to enforce States' contracts have been sanctioned is very long.

Of these *Woodruff vs. Frapnell*, 10 How., 190, was *mandamus* to compel the proper State officer to accept tax-receivable notes of the Bank of Arknasas in payment of a judgment.

Furman vs. Nichol, 8 Wall., 44, was *mandamus* to compel the office authorized to grant licenses to accept tax-receivable notes of the Bank of the State of Tennessee in payment of the relator's license.

State vs. Stoll, 17 Wall., 425, was *mandamus* to compel the Treasurer of Charleston County to receive tax-receivable notes of the Bank of the State of South Carolina for taxes.

Tomlinson vs. Branch, 15 Wall., 460, was a case where an injunction was granted against a State officer to restrain the collection of a tax contrary to the State's contract of exemption from taxation.

These cases and many others are cases in which this Court has sanctioned the enforcement of States' contracts, by suits against State officers; both by compelling acts which constituted the performance of those contracts, or by restraining acts which constituted a violation of those contracts.

The fact, therefore, that in the present case, the defendants are State officers, and that the contract sought to be enforced, is the State's contract, does not in any manner, under the decisions of this Court up to the present time, make the present suit *a suit against the State*, in the jurisdictional sense of these words.

Nor does the fact that the State officers are "obeying the laws of the State," as asserted in the demurrer, affect the question of jurisdiction.

The State officers in refusing to accept coupons for taxes and licenses are acting under *a void* law; as was said in *McComb vs. Board of Liquidation*, 92 U. S., at p. 541: "If the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. *An unconstitutional law will be treated by the Courts as null and void.*"

V.

The third ground of demurrer is that the complainant does not aver that he is a tax payer.

The contract here in question is not between *the State and taxpayers*, but between the *State and coupon-holders*.

Thus in *Hartman vs. Greenhow*, 102 U. S., 672, this Court, referring to the Act of March 30, 1871, said, "A contract was thus consummated *between the State* and the holders of the new bonds and *the holders of the coupons*, from the obligations of which she could not, without their consent, release herself by any subsequent legislation."

If the contract, then, is between the State and the coupon-holders, no averment that the complainant is likewise a taxpayer can be necessary.

The bill sets forth that the complainant has made arrangements with tax-payers of the State of Virginia to tender his coupons for taxes, but that the unlawful actions of the State officers prevent the transfer of his coupons to such taxpayer, and thereupon he asks that the State officers may be required to perform the State's contract by "receiving his said coupons in full payment of the taxes, license taxes or other dues *by any tax-payer to the State, who may tender the same in payment thereof.*"

The contract is with the *coupon holder*, and is, that the State will receive the *coupons when tendered for taxes.*

The enforcement of the contract consists in compelling the State officers to receive the coupons when tendered.

The contract of the State with the complainant *as a coupon holder* is broken by a refusal to receive his coupons when tendered by a tax-payer.

The bill avers that the State, through her officers, now refuses to receive the coupon for taxes except on such terms as almost entirely to prevent their tender by tax-payers, and refuses to receive them on any terms whatever for license taxes. It is this threatened wrong of a refusal to receive complainants' coupons when tendered by the taxpayers which makes the equity and the right to equitable relief in this case.

We have then here (1) a right secured by contract—the right to have the coupons received when tendered by tax-payers; (2) a threatened violation of this right by authority conferred by the laws of the State on its officers to refuse the coupons—in other words, as was said in *McComb vs. Board of Liquidation*, "A plain, official duty is threatened to be violated by a positive official act," and therefore, as was said in the same case, "Any person who will sustain personal injury thereby,

for which adequate compensation cannot be had at law, may have an injunction to prevent it."

VI.

But another ground of demurrer is that the bill does not aver a tender of his taxes by the complainant, under protest, as required by the laws of Virginia.

This ground has reference undoubtedly to the Act of January 14, 1882, which was before this Court in *Antoni vs. Greenhow*, 107 U. S., 769.

In that case this Court affirmed the judgment of the State Court, dismissing the *mandamus* on the ground that the act gave a sufficient remedy to the tax-payers to compel the receipt of his coupons for taxes, if refused.

That remedy was a substitute for the remedy by *mandamus*, and like *mandamus* is a *remedy at law*, not in equity.

The act did, in fact, take away all other remedies, legal and equitable, or attempted to do so. But all this cannot affect the complainant in a court of equity of the United States. If he is entitled to the remedy now asked for on the general principles and practice of equity in the Courts of Chancery of England and this country, —he is entitled to maintain this bill *without reference to the legal remedies afforded taxpayers of Virginia by the laws of that State*, and without reference to any legislation of that State.

VII.

But it is objected and made another ground of demurrer to this bill, that the complainant asks relief on

behalf of himself and other taxpayers with whom he claims to have made arrangements for the transfer of his coupons.

This is a manifest misapprehension of the bill. The complainant asks no relief on behalf of the taxpayers. He states the arrangements he has made with taxpayers of the State to tender *his* coupons, and he alleges that the actions and threatened action of the State officers has resulted in actual damage to him exceeding $500, and that for this damage he is *without adequate remedy at law.*

The relief he seeks is wholly on his own account, as a single coupon-holder.

VIII.

But another ground of demurrer is that there is a misjoinder of parties defendant, inasmuch as the defendants, who are the treasurers and commissioners of revenue for the cities of Richmond, Norfolk and Lynchburg, are joined with the Auditor of Public Accounts, whose duties are co-extensive with the State.

It appears that the treasurers of the aforenamed cities are the collectors of the State taxes for those cities.

It also appears that, in some cases, licenses are granted by the Auditor of Public Accounts, and that in such cases the deposit required for license taxes is made with such auditor; that, in other cases licenses are granted by the commissioners of revenue for the said cities—in which cases the deposits for license taxes are required to be made with the treasurers of said corporations.

Act of February 25, 1884; *Laws of Va.*, 1883–'84, p. 189.

Thus the several defendants are all charged with duties in connection with the receipt of funds for the payment of taxes, and of license taxes. Under the State laws these various officers are, each in his official place and within the scope of his office, refusing and threatening to refuse coupons for taxes and licenses. All have the same relation of persons refusing to do a plain official duty, or persons threatening injury to the complainant.

In Jeremy's Mitford's Eq. Pl., 181, it is said:

"The Court will not permit a plaintiff to demand by one bill several matters of *different natures* against several defendants; but when one general right is claimed by the bill, *though the defendants have separate and distinct rights*, a demurrer will not hold."

Story in his *Equity Pleadings*, § 553, says, referring to the authority of Lord Cottenham in *Campbell vs. Mackay*, 1 Mylne and Craig, 623, 624: "The result of the principles to be extracted from the cases on this subject seems to be, that where there is a common liability in the defendants and a common interest in the plaintiffs, different claims to property, at least if the subjects are such as may without inconvenience be joined, may be united in one and the same suit."

And to this he adds:

"Indeed, where the interests of the plaintiffs are the same, although *the defendants may not have a co-extensive common interest*, but their interests may be derived under different instruments, if the general objects of the bill will be promoted by their being united in a single suit, the Court will not hesitate to sustain one suit against them all."

In *Whaley vs. Dawson*, 2 Schoales & Lefroy, 370, Lord REDESDALE considered the test to be whether there was "a *general right in the plaintiff* covering the whole case, although *the rights of the defendants may have been*

distinct." And in referring to the case of the *Mayor of York vs. Pilkington*, and analagous cases, he said:

"The Court has gone upon the ground of *preventing multiplicity of suits*, one general right being claimed by the plaintiffs against all the defendants."

The right asserted in this bill is the single right to tender coupons for taxes, and to have them received in payment of taxes. This right is refused and threatened alike by the several defendants. The interest of the defendants, the duty of the defendants, is common to all, one which each of them is bound to perform. How does the fact that the *extent* of the jurisdiction of these officers is not the same, when the duty to receive coupons when tendered is common to them all, render the bill obnoxious to the charge of multifariousness, or misjoinder of parties defendant?

IX.

There remain two important questions for consideration:

First. Does the complainant's bill state a case warranting the exercise of the equitable jurisdiction of a United States Court?

Second. Was the Court below warranted in granting the form of relief granted by the decree below?

1. Does the bill make a case warranting equitable relief in the United Courts?

The gist of this bill is easily discovered. It consists simply in this: The plaintiff alleges that he is the holder of certain Virginia coupons, which are on their face and by the terms of the act under which they are issued, receivable for taxes and all dues to the State. He alleges that this contract was the very consideration upon which he was induced to take the coupons; that this receivability for taxes necessarily involved the idea of the right, on the part of the complainant, to dispose of his coupons to taxpayers in the State of Virginia, in case he did not choose to use them for the payment of any taxes of his own; that this again was an essential consideration in his purchase of the coupons, and that inasmuch as the State does not pay the coupons directly in money, this receivability for taxes has become the chief, almost the sole element of value in the coupons.

The complainant further alleges that the State of Virginia, by a series of legislative enactments, has undertaken to hinder and defeat the exercise of the right of receivability of these coupons, both as a tender by the taxpayer himself and by consequence the sale or disposal of the complainant's coupons to those who otherwise would purchase and tender them in payment of taxes in Virginia. This refusal, he asserts, is accomplished under the legislation of Virginia by the present State officers, and he seeks to have them enjoined from carrying into execution the unconstitutional laws which direct them to refuse the complainant the rights secured by his contract.

It is difficult to see how an equitable right could be more clearly stated than in this bill.

The State enters into a contract, one essential element of which is that she will receive coupons for taxes and all other dues. She thereupon proceeds to forbid her officers to receive them, and thereby not only destroys the right of the taxpayer himself to tender the coupons, but the right and privilege of the

outside holder of the coupons to sell the same to taxpayers within the State.

The use of the writ of injunction against public officers is a recognized head of equity jurisdiction. Thus, in *High on Injunction*, it is said, Sec. 1308: "The preventive jurisdiction of equity extends to the acts of public officers, and will be exercised in behalf of private citizens who sustain such injury at the hands of those claiming to act for the public, as is not susceptible of reparation in the ordinary course of proceedings at law. And it may be stated, as a general rule, that where public officers, under color or claim of right, are proceeding to impair either public or private rights, or where their proceedings will result in serious injury to private citizens, without any corresponding benefit to the public, or where the aid of equity is necessary to prevent a multiplicity of suits, an injunction will be allowed."

The same author, at Sec. 1309, says: "In applications for relief by injunction against the acts of public officers, the determining point is ordinarily whether they are acting within the scope of their authority, or whether they are transcending that authority. And while equity will not interfere, as long as such officers are acting within the authority conferred upon them by law, to determine whether their action is good or bad, yet if they assume powers over property which do not belong to them, and infringe or violate the rights of citizens under pretense of such assumed authority, equity has jurisdiction to interfere for the protection of the citizen."

Again, at *Sec.* 1310, the same author says: "When a plain official duty, requiring the exercise of no discretion, is incumbent and obligatory upon a State officer, he may be enjoined from acting in violation of such duty by one who will thereby sustain a personal injury

for which adequate compensation cannot be had at law. And the relief by injunction in such a case is regarded as correlative to that by *mandamus* when sought to compel the performance of an official duty, as to which no element of discretion exists." And in support of this proposition the author refers to *Board of Liquidation vs. McComb*, 2 Otto, 531.

In the latter case, an injunction was sought to restrain the Board of Liquidation of the State of Louisiana from issuing bonds known as the consolidated bonds of the State for the liquidation of a certain debt claimed to be due from the State to the Louisiana Levee Company, and from issuing any other State bonds in payment of such pretended debts. The Court, in that case, held that, although "the State, without its consent, cannot be sued by an individual, nor can a Court substitute its own discretion for that of executive officers in matters belonging to their proper jurisdiction, yet, when a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty *is threatened to be violated by some positive official act*, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have *an injunction to prevent it*."

The Court is familiar with the facts of the case of *Board of Liquidation vs. McComb*, and it is referred to here as a leading and authoritative decision, in support of the present bill.

In the present case, assuming as we must, that all laws hindering or preventing the receivability of Virginia coupons for taxes and other dues to the State are

absolutely unconstitutional and void, the present officers of the State are acting strictly without authority in refusing to receive such coupons for taxes and other dues to the State. And the case of *Board of Liquidation against McComb*, as well as the other authorities already cited, in the case of public officers, warrants this Court in granting the injunction asked for.

There can be no doubt that the complainant, in the present case, did acquire the right to have his coupons received for all taxes and other dues to the State of Virginia. The short and conclusive argument is that if he has this right secured by the contract, and any person in Virginia, whether public officer or otherwise, is hindering him without authority of law, or preventing him from the enjoyment of this right, then it is the exact province of a court of equity to restrain such unlawful and injurious act; and this is the right and the remedy which was asserted and exercised in the case of *Board of Liquidation vs. McComb*.

X.

Second. Was the Court below warranted in granting the form of relief granted by the decree below?

The final decree of the Court below made the preliminary injunction permanent and final.

The preliminary injunction enjoined and restrained "the defendants, and each and every one of them, from refusing to receive and accept, without delay or demur, any of the coupons in the bill and exhibit mentioned in full and complete payment, satisfaction and discharge *pro tanto* of any tax, license tax or assessment, or other dues due the Commonwealth of Virginia, by any taxpayer of, or to the said State, or by

her prescribed to be paid or deposited by him, who may tender the same in payment, discharge or satisfaction thereof, or of the deposit required to be made with the said Auditor or the said Treasurer of the amount of the assessment prescribed by law as a condition precedent to the issuing of any license, all in the same manner, and to have precisely the same force and effect as if such payments or deposits were made in coin or currency.

And from refusing to execute and deliver forthwith to such taxpayer, without delay or demur, and immediately upon his making such tender of the amount due by him, whether wholly in such coupons named in Exhibit A, or partly therein, and the residue in money, his tax bill duly receipted, or to an applicant for a license tendering in like manner, the amount of the assessment thereon, a certificate that the amount thereof has been deposited with him by the said applicant, said receipt and certificate to be executed and given and received in precisely the same manner and to have precisely the same force and effect as if said payments or deposits had been made in coin or currency.

And from refusing immediately upon the presentation and receipt of such receipt or certificate by and from any applicant for such license to grant and issue to him the license applied for in precisely the same manner and to have precisely the same force and effect as if said payment or deposit had been made in coin or currency, and said receipt and certificate had so stated.

And from acting, doing or proceeding, or refusing to act, do or proceed in the premises, or any manner whatsoever different from their usual course of actings, doings and proceedings in cases when such payments or deposits are made in coin or currency, and the receipts therefor and the certificate thereof so state."

Authority for the use of such a form of the writ of injunction is not wanting.

An injunction is either *mandatory* or *prohibitory*. "A mandatory injunction is one that compels the defendant to restore things to their former condition, and virtually directs him to perform an act. The jurisdiction of the Court to issue such a writ has been questioned; but it is now established beyond doubt. The order, however, is not *direct* in its form, but the end is reached by a writ apparently prohibitory. Thus an injunction that a defendant should deliver up books and papers in his possession has been issued in this form. 'Let an injunction be awarded to restrain the defendant H. from obtaining and keeping possession of the books, deeds, documents and papers removed, as mentioned in the plaintiff's affidavit, by the said defendant, or by his order, from the chambers occupied by the plaintiff, for retaining which no written authority has been produced by the defendant, and from permitting the same, or any, or either of them, to remain away from the office of the plaintiff, or from parting with the same to any person or persons other than the plaintiff.' This order, it will be observed, is in terms a restraining order; but in effect it is a command to the defendant to deliver up the books and papers."

Bishpam's Principles of Equity, 3d Ed., section 400.

We have in Lane vs. Newdigate, 10 Vesey, *193, the great authority of Lord ELDON for the same procedure.

Plaintiff was assignee of a lease granted by defendant for the purpose of erecting mills and other buildings, with covenants for the supply of water from canals and reservoirs, on the defendant's estates. The bill prayed in particular that the defendant be restrained from using the locks, and thereby drawing off the waters which would otherwise run to and supply the manufactory, and that he may be decreed to restore the cut for carrying the water from the Arbury canal to Kenilworth pool, and to restore Kenilworth stop-

gate, and the banks of the canal to their former height, and also to repair such stop-gate, bridges, canals and towing paths as were made previously to granting the release.

The Lord Chancellor (Ld. ELDON) " upon the motion for the injunction, expressed a difficulty, whether it is according to the practice of the Court to decree, or order repairs to be done."

" The question," he says later on, " is whether the Court can specifically order that (the stop-gate) to be restored. I think I can direct it in terms that will have that effect."

" The order pronounced was that the defendant, his agents, &c., be restrained until further order from further *impeding, obstructing or hindering the plaintiff from navigating the canal* for the necessary purposes of the mill, or from using and enjoying the demised premises, and the mills and buildings erected thereon, or the liberties and privileges granted by the indenture of lease, &c., contrary to the covenant, *by continuing to keep the said canals, or the banks, gates, locks or works of the same respectively out of good repair, order or condition*, and also from *further troubling, molesting and preventing the plaintiff contrary to the covenant* in the use and enjoyment of the said mills and buildings, or the liberty, privilege and power of drawing for the use of said mill from the canals, &c., a sufficient quantity of water for the use and working of said mill, *by diverting, draining or drawing off water or preventing the same* by the use of any lock or locks, erected by the defendant, from remaining and continuing in the said canals, or by continuing the removal of the stop-gate, mentioned in the pleadings in the action brought by the plaintiff, to have been directed, and by means of which the water could and would have been kept and retained in the said pool for the use of the mill."

In *Cooke vs. Chilcott*, L. R., 3 Ch. Div., p. 694, a motion for an injunction *to restrain the defendant from*

keeping or leasing two houses belonging to the plaintiffs, or either of them, or any other houses that might be thereafter built upon a piece of land belonging to the plaintiffs, *without* a full and ample supply of good, clear and wholesome spring water, contrary to a covenant contained in an indenture of the 29th of September, 1849, was granted, and an injunction ordered in the terms of the notice of motion.

In *Corning et al. vs. Troy Iron and Nail Co.*, 40 N. Y., 191, it was held by the Court of Appeals of New York, that "Equity will interpose, by mandatory injunction, to compel the restoration of running water to its natural channel, when wrongfully diverted therefrom, at the suit of the party whose lands include either the whole or any part of such channel.

"The grounds of equitable interposition in such a case are two-fold: First, *the inadequacy of any legal remedy* to secure the party in the enjoyment of his right to have the water flow in its natural channel. Second, *to prevent a multiplicity of suits for damages* accruing from the daily and continuous wrongful diversion of the stream."

At page 206 the Court says: "Upon established principles, this is a proper case of equity jurisdiction. First, upon the ground that the remedy at law is inadequate. The plaintiffs are entitled to the flow of the stream, in its natural channel. Legal remedies cannot restore it to them and secure to them the enjoyment of it. Hence the duty of a court of equity to interpose for the accomplishment of that result.

"A further ground requiring the interposition of equity is to avoid multiplicity of actions. If equity refuses its aid, the only remedy of the plaintiffs, whose rights have been established, will be to commence suits from day to day, and thus endeavor to make it for the interest of the defendant to do justice by restoring the stream to its channel. If the plaintiffs have no other means of recovering their rights, there is a great de-

fect in jurisprudence. *But there is no such defect.* The right of the plaintiffs to the equitable relief sought is established by authority as well as principle."

In *Coe & Milsom vs. Louisville & Nashville Railroad Co.*, 3 Fed. Rep., 775, the complainants were the owners of a stock-yard, and defendants had entered into an exclusive contract with the owners of another stock-yard and had notified the complainants of their purpose to grant no more facilities to complainants. Complainants thereupon filed a bill praying for an injunction to restrain defendants' agents and officers and servants from interfering with, or in any way disturbing the enjoyment and facilities now afforded to complainants by said defendants upon its lines of railway * * * *and from refusing to receive and transport stock from complainants' yard*, * * * and *from refusing to permit the complainants to continue their business on the same terms as heretofore.*"

Judge BAXTER, in granting a preliminary injunction, says:

"The defendant contends—*First*, that complainants have an adequate remedy at law, and therefore cannot have any relief from a Court of Chancery; and *Second*, that if a Chancery Court may entertain jurisdiction, no relief in the nature of a mandatory order to compel defendant to continue accommodations to the complainants ought to be made till the final hearing. We do not concur in this interpretation of the adjudications. * * * Complainant could, in the event defendant carries its threat into execution and withholds the accommodations claimed as their right, sue at law and recover damages for the wrong to be thus inflicted. *But they could not, through any process used by Courts of law, compel defendant to specifically perform its legal duty in the premises. And this imperfect redress could only be attained through a multiplicity of suits*, to be

prosecuted at great expense of money and labor; and then, after reaching the end through harassing delays incident to such litigation, *complainants' business would be destroyed.*"

In *Brooke vs. Barton*, 2 Munford, 306, Barton covenanted to make a good title to certain lots of land, "*including the use of the streets and appurtenances therein mentioned*," and that the covenantee "may, at all times, enter into and enjoy the said lots, *with said streets*, &c., without let or hindrance from the covenantor, his heirs and assigns."

Upon a bill in equity, alleging obstruction of said streets by Barton the Chancellor held that as the defendant did not undertake *to open the streets* he could not be compelled to do it.

But the Court of Appeals reversed the decree and entered a decree enjoining the covenantor and "those claiming under him *to remove all obstructions*," and *to permit the covenantor to enjoy said streets according to the covenant.*

In *Trueheart vs. Price*, 2 Munford, 468, the vendor had assured the vendee of land that an adjoining piece of land was always to be kept open as an alley, by which assurance the vendee was induced to purchase at a higher price than he would have given but for such assurance.

On bill filed, a decree was made, enjoining the vendor perpetually from obstructing said alley, and the decree was affirmed by the Court of Appeals.

In the *Baltimore & Ohio Railroad Co. vs. Adams Express Co.*, 24 Fed. Rep., the defendant company had refused, or had notified the complainant of their intended refusal, to accept and convey express packages except upon conditions which the bill alleged caused, or would cause, great and irreparable injury to the business of the complainant.

The prayer was for an injunction, restraining the defendant *from* " *refusing to accept parcels*, &c., and *from refusing to afford the same facilities* as those afforded to other companies," &c.

The injunction was granted in form as prayed for.

These authorities seem ample to sustain the position that equity will, where the remedy at law is inadequate, interpose by injunction to secure the enforcement of contracts, or to restrain their continued violation; and that in accomplishing this result, a *mandatory injunction* is an appropriate form of decree.

XI.

Only one more question seems necessary to be examined: Has the complainant an adequate remedy at law; or, as was said by this Court in *Hook vs. Payne*, 7 Wall., 425, is the remedy at law, if there be any, "as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity?"

It is said, with much confidence, that this Court has held the remedy provided by the Act of January 14, 1882, which was considered in *Antoni vs. Greenhow*, 107 U. S., 769, to be an adequate remedy. One answer is that this Court in that case simply held that the remedy provided by that act was an equivalent for the remedy by *mandamus*, existing when the contract was entered into—not that it was such a remedy as would *exclude equity and equitable remedies.*

But let us examine the remedy of 1882 considered in *Antoni vs. Greenhow*. By its terms it is limited to a recovery of *the amount of money paid under protest*, without any provision for damages. The taxpayer of Virginia, under this Act, cannot have a full remedy for

the refusal to receive his coupons without delay or demur. The remedy of 1882 may be of equivalent value to that by *mandamus*, but it does not afford the taxpayer a *full remedy for his wrong.*

But, however that may be, that remedy must be resorted to as often as a tender of coupons is made. Each individual must resort to it, each for himself. It leads, therefore, to that precise *multiplicity of suits at law*, which it is one of the chief objects of equity to prevent, which in fact is one of the leading sources of equitable jurisdiction.

But, if there were no other ground of objection to the adequacy of this remedy at law, this remedy, the remedy afforded by the Act of January 14, 1882, is *not a remedy at all for this complainant. That remedy is available only to those who are taxpayers of Virginia.* The complainant is not a taxpayer, but a couponholder. The Act of 1882 *gives the complainant no remedy.*

One of the most important averments of the bill here is that the refusal and threatened refusal of the State officers to receive the coupons without delay or demur will result in the destruction or deprivation of his right to his coupons to taxpayers with their tax receivable quality annexed, a right which he asserts is worth to him at least ninety-five per cent. of the face of his coupons. What remedy at law can it be suggested he has for this injury? It is clear that he has no remedy at law, adequate or inadequate.

We say, therefore, (1) that if the remedy of 1882 by suit to recover the money under protest were available to the complainant, it would not, in any sense, be a remedy which would be adequate to repair the wrong or threatened wrong of which he complains.

But we say (2) that that remedy is not available at all to the complainant, because, by its terms, it is limited to *taxpayers* who pay taxes under protest.

And we say (3) that for the actual injury to his pecuniary interest in the contract of the State, there is *no remedy at law whatever.*

Unless, therefore, a court of equity can afford him relief, he is strictly remediless.

DANIEL H. CHAMBERLAIN,
Of Counsel.

114-325

SUPREME COURT OF THE UNITED STATES,

No. 1278.

MORTON MARYE, Auditor of Virginia, et als.

vs.

EDWIN PARSONS.

BRIEF FOR EDWIN PARSONS.

RICHARD L. MAURY, RICHMOND, VA.,
For Defendant in Error.

Supreme Court of the United States,

MORTON MARYE, AUDITOR, &c. ET ALS.
ATS
EDWIN PARSONS.
} No.

Appeal from Circuit Court of the United States for the Eastern District of Virginia.

ARGUMENT OF RICHARD L. MAURY, FOR DEFENDANT IN ERROR.

STATEMENT.

The defendant in error, a citizen of the State of New York, is the owner of certain bonds and past-due coupons of the State of Virginia, which latter the State declines to pay, although neither the obligation nor the amount of indebtedness is denied, and brought his suit in chancery in the Circuit Court of the United States for Virginia upon certain of these coupons, which not only promise payment of the money therein named, but contain a stipulation that all the collectors of the State shall receive them, whenever tendered, in full payment of all taxes, debts and demands due the Commonwealth. He alleged in his bill that the State refused to pay them, and as the tax collector also refused to receive them for taxes, he was thus prevented from selling them to tax payers, as he had a right to do under this the most valuable element of his coupon contract. He also alleged that he had been accustomed regularly so to sell them

formerly, when they used to be received for taxes, and could readily do so now, if they would be so received again, and, in fact, had done so upon that condition; and he therefore prayed an injunction mandatory to certain defendant tax collectors to compel their reception, alleging that otherwise his vendees would not buy them from him, and he would be irretrievably damaged.

Upon the hearing of this motion, notice of which was waived by the defendants, they filed their demurrer, pleas to the jurisdiction and answer, all of which made the same defense; and in effect, as no further defense was made or evidence filed upon the hearing, was a submission of the entire case upon the preliminary motion. In fact, as the defense was made solely upon matters of law, the hearing of this preliminary motion was equivalent to a final hearing upon the merits of the bill. The demurrer was overruled, the complainant's demurrer to the pleas was sustained, the preliminary injunction awarded as prayed, commanding the defendants to cease refusing to accept the complainant's coupons, and to treat a payment therein the same as if made in money; it was not used or made effectual, however, as the bond required for that purpose was not given; and a few days afterwards, the cause being set for hearing by consent, the same was heard upon the same pleadings, and the complainant's affidavit to the truth of the allegations of the bill read as his deposition, by consent, and the injunction was made perpetual by final decree, from which this appeal was taken.

PUBLIC DEBT, AND HEREIN OF THE RECENT LEGISLATION.

A brief review of the history of the public debt of Virginia, especially of the recent legislation thereon, is essential to the proper understanding as well of the equities of this creditor as of his true legal status.

This debt is for money borrowed many years ago with which to carry on a system of internal improvements and

public works necessary for the development of Virginia's great resources. The money thus obtained was used to construct her railways, canals and other lines of communication between the mountains and the sea, to build and endow her schools and colleges, and to support and maintain her asylums and other charitable institutions for the provision and comfort of her own poor and unfortunate, all, or nearly all, of which are within her present borders. It was wisely and judiciously expended, or, it may be said with equal truth, invested; the advantages its use yielded to Virginia were incalculable; they have been enjoyed by every citizen of the State for half a century and more, and their beneficial influence has been felt for many years throughout the entire land; it was with funds thus borrowed, and yet unpaid, that the capitol at Richmond was built, its library and legislative halls furnished and adorned, and the statues of her distinguished sons procured and erected there; and considerable amounts of it were loaned to the general government to aid in rebuilding its capitol, and to meet the expenses of the war of 1812.

In 1860 this debt amounted to about thirty millions of dollars, the bonds were generally held abroad, where they ranked in public estimation next to British consols, and the interest had never been in arrear a single day.

Immediately after the war, the first legislature which met hastened to assure the public creditor that full faith would be kept with him, and that notwithstanding the dismemberment of the State, she still held herself liable for the entire debt; and so also decided our Court of Appeals in *Higginbotham* v. *The Commonwealth*, 25 Grattan, p. 627. The same legislature also pledged the State to the payment of full interest on the bonds; but there not being sufficient funds in the treasury to meet all the war accumulations, the creditor was asked to fund these arrearages, and readily agreed to do so.

But even with this indulgence, it was soon found that, in the impoverished condition of the State, the annual interest

could not be met, and was again accumulating, so that, in 1871, the legislature passed an act appealing to the bondholders to release the State from one-third of their entire claim, and to accept her new bonds for the residue, with interest coupons, which she promised should be accepted by all or any of her tax collectors in payment of taxes. This second proposal was also promptly acceded to by the creditors, who fully sympathized with the State in her difficulties and losses, and most of the old bonds were accordingly thus exchanged for the new within a twelve-month, and all, no doubt, would have been had not the tax-receivable coupon feature of the act been repealed.

But again, notwithstanding this large reduction of the principal of the debt, the scanty revenues then collected still did not suffice to defray all the expenses of the State, including interest; the coupons in the hands of tax-payers absorbed a very large proportion of the income, so that in 1879 the creditors were again appealed to for further concession, and asked to surrender their six per cent. bonds and take new threes instead, and to entirely release one-half of the interest then accumulated and take these new threes for the other half. Again, the State's appeal was generously responded to, and the exchange was being largely made when the act was repealed. Others were soon after passed, now known as the Riddleberger laws, which, emboldened by the constant concessions of creditors, demanded still larger sacrifices from those who had already twice or thrice abated their claims. These acts suspended payment of interest on all bonds save those issued thereunder, forbade the reception of any coupons for taxes, and required the creditor to consent to another reduction of the residue of his principal of from one-fourth to one-half, and for this to accept a new bond bearing only three per cent. interest, and without the security of the tax receivable coupon. They were passed three years ago, and have for the time deprived the coupons almost entirely of their tax paying quality. That passed January 14, 1882, requiring that certain proceedings

at law should be taken before the coupon should be so received, was construed by this court in *Antoni* v. *Greenhow*, 107 U. S. 770, and sustained. It has proven, however, to be so obstructive in its operation that in the three years which have elapsed since it was made a law, out of nearly six millions of past due tax receivable coupons, which were then outstanding or have matured since, only $218,000 have submitted to its onerous requirements, and passed into the treasury, while before it was enacted a million and more of coupons were every year used in payment of taxes.

Not content with the unexpected successful prohibitory effect of this act, which has deprived the bondholder almost entirely of the privilege of having his coupons used in payment of taxes, no effort has been spared since the decision of the court in *Antoni* v. *Greenhow*, *supra*, to add to its difficulties and prevent successful proceedings under it, so as to discourage and prevent the use of coupons altogether; and every legislative device and delay of litigation that ingenuity could suggest has been resorted to for the purpose of wearying the creditor into relinquishing half his remaining bond, half the agreed rate of interest, three-quarters of that which is in arrears, and all of his security, for such is now the abatement or readjustment demanded. In so doing, however, the legislature seems to have been utterly blind to consequences, and in many instances have passed acts in direct violation of the coupon contract and the decisions of this court, so that the effort to deprive the coupon holder altogether of all his rights, has really resulted in rendering null and void all the legislation of the past three years against him in this respect, and so has rehabilitated the coupon completely in its most valuable features.

In the cases of *Antoni* v. *Greenhow*, 107 U. S. 770; *Tennessee* v. *Snead*, 96 U. S. 69, and many others, it has been determined that when it is sought to substitute a new remedy for an old, the former must be as simple, plain and efficacious as the latter, else the obligation of the contract,

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of which it forms part, will be impaired and the new remedy null. It has also been finally decided by an unbroken line of decisions in the Supreme Court of Virginia, commencing with *Antoni* v. *Wright*, 22 Grat. 833; *Wise* v. *Rogers*. 24 Grat. 169; *Clarke* v. *Tyler*, 30 Grat. 134; and *Williamson* v. *Massey*, 33 Grat. 237; and in this court in *Hartman* v. *Greenhow*, 102 U. S. 684; and *Antoni* v. *Greenhow*, 107 U. S. 770, that the right of the coupon holder is to have his coupon received when tendered for *all* taxes, debts and demands due the State, and that any law forbidding this is unconstitutional, and therefore void. Yet, observe how legislation has encroached upon this right, since this court decided *Antoni* v. *Greenhow*, by forbidding the payment with coupons of any tax at all generally, and then specially, first of one kind and then of another, until the use of them is altogether forbidden, especially in respect of two-thirds of the entire revenue especially named, and the substituted remedy then passed upon by this court has been so loaded down and hampered with new conditions, difficulties and delays that it is now practically prohibitory, and a remedy to the coupon holder only in name.

The following are some of the new laws referred to:

I. The use of coupons in payment of any tax is absolutely forbidden, and all acts inconsistent with that provision are repealed. Acts 1883–'4, p. 603, §§ 12, 14, approved March 15, 1884. Thus are repealed all acts giving the coupon holder a means of paying his taxes with coupons.

II. The use of coupons in payment of the specific license tax, or of the capitation tax, or of one-fourth of each tax bill, called the school tax, is absolutely forbidden, and all acts inconsistent therewith are repealed; thus repealing the substituted remedy passed upon by this court in *Antoni* v. *Greenhow*, and leaving the coupon holder without remedy of any kind as to these specific taxes. Acts 1883–'4, p. 120, approved February 7, 1884; p. 189, approved February 25, 1884; §§ 112, 113, 114, of general tax bill, p. 603, approved March 25, 1884.

III. Corporations, foreign and domestic, are forbidden to use coupons at all in payment of their taxes, under penalty of forfeiture of their charter. This prohibition is sought to be made effectual by a general law, (Acts 1883–'4, p. 229, approved February 25, 1884,) which provides that thereafter no company shall be chartered, or have an amendment renewal or extension granted, except upon condition that it shall "pay its taxes in money, and not in coupons"; and also by inserting this condition as a special clause in all, or nearly all, of the new charters granted. Acts 1883–'4, pp. 221, 292, § 12; 295, § 15; 312, § 10; 323, § 13; 343, § 8; 349, § 2; 363, § 11; 387, § 6; 416, § 7. More than one hundred and thirty charters or amendments were granted by the last legislature at a single session, so that it is apparent that if it be legal thus to deprive the coupon holder of his right to have his coupons used in payment of those portions of the taxes due the State, the prohibition will soon be extended to all corporations; for sooner or later in the extension and development of their business, they must require amendments or renewals. Already three or four of the largest corporation tax-payers have been granted amendments, and thus brought within this law; and the taxes of these alone exceed $100,000 per annum.

IV. The use of coupons in payment of certain debts to the State is expressly forbidden,—*i. e.*, debts due for the hire of certain convicts, and for the purchase of certain public lands directed to be sold, amounting to more than $100,000. Acts 1883–'4, p. 406, approved March 7, 1884, and page 465, approved March 10, 1884.

The direct and necessary effect of this special legislation is to deprive the coupon holder altogether of any opportunity to have his coupons used in payment of these taxes, which aggregate nearly, if not quite, a full two-thirds of all annually levied and collected by the State, and so to deprive him entirely of the benefit (?) as to them of the use of the new remedy substituted by the State for the old proceeding by *mandamus*.

This new remedy, which now applies, if at all, only to the payment of the remainder of the taxes not expressly forbidden to be paid in coupons, as above described, has been fatally overburdened and obstructed, since this court decided *Antoni* v. *Greenhow*, by the following acts of the last legislature:

1. An act requiring an appeal to be taken and granted, as a matter of right to the Commonwealth, in every suit brought on coupons under this remedy, (Acts 1883–'4, p. 504, approved March 12, 1884,) whereas theretofore no appeal could be had, unless for error, and then only where $500 or more was in controversy. Virginia Code, 1873, p. 1136, § 3.

2. An act forbidding counsel to undertake suits upon coupons unless in addition to their ordinary license-tax ($25) they paid $250 more. Acts 1883–'4, p. 597, § 91, approved March 15, 1884.

3. An act forbidding stock and exchange brokers to deal in coupons unless in addition to their ordinary license ($250) they paid $1,000 more, and twenty per cent. upon the face of all coupons bought and sold. Acts 1883–'4, p. 590, § 65, approved March 15, 1884.

4. An act forbidding the officers of the government, whose duty it is to receive and pay or fund coupons, and therefore to determine whether they are spurious, to be summoned by tax-payers to court to testify to their genuineness. Acts 1883–'4, p. 211, approved February 25, 1884.

5. An act providing that three-fourths of each coupon tendered for taxes and proved under this new remedy (*i. e.*, the act construed by the court in *Antoni* v. *Greenhow*, 107 U. S. 770, and declared to be, and in part for that very reason, a remedy for the enforcement of the *payment* of the *coupon*) shall be charged against the *principal* of the bond from which it was cut, and credited *as a payment pro tanto of that principal*. Acts 1883–'4, p. 721, approved March 19, 1884, which is as follows:

AN ACT

To Provide a Sinking Fund for Tax-Receivable Coupon Bonds.

"WHEREAS, It is the intention of the General Assembly, so far as they have the power to cause the basis of settlement provided in the act, entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon, approved February 14th, 1882, to apply alike to all the holders of the bonds of the State; and whereas many of the holders of the bonds have not accepted the provisions of the said act, by reason whereof it has been impossible to prevent coupons being paid into the treasury for taxes, the holders of the tax receivable coupon bonds in that way enforcing the payment of a higher rate of interest than is provided by the above recited act; therefore—

"Be it enacted by the General Assembly of Virginia, that the Second Auditor shall open an account in his office, to be known as the tax-receivable coupon bond sinking fund account, in which he shall be required to enter the number, amount, and date of each coupon that may be paid into the treasury for taxes; and he shall ascertain what amount of each of such coupons that may be thus paid into the treasury would have been payable under the act recited in the preamble to this act, if the bond from which the coupon was clipped had been funded under said act, which amount so ascertained he shall deduct from the amount of the coupon, and the balance remaining shall be charged to the bond from which the coupon was clipped as a payment upon the principal of such bond, and shall be deducted from the same at maturity."

There have also been other laws recently passed which bear upon the questions now under consideration, and which materially effect the equities of the parties. They are—

I. What is called the Riddleberger Funding Bill, passed at the same time that the act construed in *Antoni* v. *Greenhow* was passed, whose object was to require proof and verification of all coupons before reception for taxes in lieu of

money, and yet this bill directed that all coupons then due, if offered for *funding*, should be received and funded without other verification than the examination of the trusty officer charged with this duty (and the very officer since forbidden to be summoned to court for this same purpose).

II. An act of March 3, 1882, discriminating against the public creditor in favor of the bonds held by certain domestic institutions, and directing that their coupons should be paid in full upon presentation, and without any verification or proof other than the inspection of the aforesaid officer. This was re-enacted by the lastlegislature. Acts 1883–'4, p. 533; approved March 15, 1884.

III. An act directing the funding without verification or proof other than the above, of all coupons like those in controversy, matured or maturing in 1883–'4–'5, at the rate of fifty cents in the dollar for consol coupons, and at par for these called McCullough coupons, both of which classes, if presented in payment of taxes, are required to be first verified by a jury, and subjected to all the difficulties of trial and delays of appeal; but if offered to be funded, the former at half their face, are readily accepted without any such requirement. Acts Special Session 1884, p. 163, approved November 29, 1884.

IV. An act directing the surplus revenue, which is accumulating in the treasury because of the non-payment and non-reception of these coupons, to be used to the extent of $100,000 monthly in the purchase of State bonds thus discredited by the efforts to avoid payment and reception of the coupons. Acts 1883–'4, p. 538, approved March 15, 1884. Under this law nearly two millions of bonds have been bought during the last nine months at an average price at but little over fifty-one.

V. An act repudiating all interest on bonds not funded (*i. e.*, at half their amount, half the interest, and no security) before July next. Acts Special Session 1884, p. 163, approved November 29, 1884.

The defendant in error is the owner of $28,000 of these

tax receivable coupons (and of the bonds from which they were cut), taken from the bonds issued under the act of March, 1871. These bonds, as already stated, were issued by the State to her creditors in exchange for her old bonds, who accepted them in return for two-thirds only of the amount they surrendered, being mainly induced to do so by the pledge engraven upon the face of the coupons, that the same, if not paid in money when due, should be accepted by all of her tax collectors in "payment of *all* taxes, debts, and demands due the State." A contract was thus executed between the State and the holders of these bonds and coupons, that they should have the right to transfer them to any taxpayer of, or debtor to, the State of Virginia, with all their qualities of receivability for taxes, etc., annexed. This contract has thus been interpreted by this court: "She thus bound herself, not only to pay the bonds when they became due, but to receive the interest coupons from bearer at and after maturity to their full amount for any taxes or dues by him to the State. This receivability of the coupons for such taxes and dues was written on their face, and accompanied them into whatever hands they passed. It constituted their chief value, and was the main consideration offered to the holders of the old bonds to surrender them and accept new bonds for two-thirds of their amount." *Hartman* v. *Greenhow*, 102 U. S. 679.

And again: "The right of the coupon holder is to have his coupon received for taxes when tendered." *Antoni* v. *Greenhow*, 107 U. S. 775.

For several years past the defendant in error has been able to utilize his coupons by having them proved and collected by tax payers under the act of January 14, 1882, but recent legislation has excluded so large an amount of the tax from the provisions of that act, and has rendered proceedings thereunder so difficult, uncertain, and dilatory as practically to prevent its use altogether. Having, however, once thus proven his coupons from these bonds in the mode required by this Virginia statute, there can of course be no

question that all other coupons from these same bonds are genuine.

He alleges that the contract of the coupon on the part of the State is two-fold:

First, That she will pay its amount to the holder on the day named.

Second, That if she failed to do so, he should have the right to assign or transfer the coupon to any tax-payer or other debtor of the State, with the quality of being received for taxes annexed, and with the guarantee that she would receive it specifically in payment *pro tanto* of any taxes or debts due her, and that it should be accepted by any of her tax-collectors from any of her tax-payers or debtors in full discharge and payment of any taxes and other dues due by them to the State; "for these coupons are negotiable when severed, and pass by delivery only, possessing the essential attributes of commercial paper." *Hartman* v. *Greenhow*, 102 U. S. 684.

And that, confiding in this right, he made arrangement with certain tax-payers to use these coupons in payment of their taxes, provided the same would be taken therefor by the tax-collector without objection or demur. That the recent legislation, having repealed all remedies for the enforcement of the State's obligation to receive the coupon, was unconstitutional in forbidding their reception, and hence they should be received on presentation. He also alleged that if immediate relief was not afforded him he would lose the benefit of his arrangements with the tax-payers for the use of his coupons, and he therefore prayed a preliminary mandatory injunction to command the Auditor of Virginia, who is the receiver of certain taxes and grants certain licenses, and the Treasurers and the Commissioners of the Revenue for the cities of Richmond, Norfolk, and Lynchburg, the former receivers of taxes, the latter grantors of licenses, to refrain from refusing to receive any of the coupons in controversy from any tax-payer in payment of any taxes, or of the deposit required by the new license law as a condition

precedent to obtaining the license, and from refusing to grant the license when applied for, after the payment or deposit of the amount assessed therefor in coupons, in like manner as if such payment or deposit had been made in the coin or currency required by the said act, which had been made difficult and complicated in its requirements for the purpose of frustrating any attempt to make the payment for licenses in coupons. See Sess. Acts 1883–'4, p. 120, approved Feb. 7, 1884, and p. 189, approved Feb. 25, 1884, and p. 603, § 112, and § 114, approved March 15, 1884, which expressly repeals all the remedies of coupon holders, desiring to pay a license tax, to enforce their reception therefor.

ARGUMENT.

It has been remarked from this Bench, touching a case very similar to the one under consideration, that "it was of more importance than difficulty;" and the same might be appropriately repeated now.

There being no denial of any of the facts alleged in complainant's bill, all of the defences made may well be considered upon the demurrer. To that, therefore, the argument will be chiefly addressed, for upon it the case rests.

The matter for consideration then, may best be divided under two heads:

First, The Law of the Case, and the Rights of the Complainant.

Second, The Remedies Available to him, and herein of the Special Relief Granted.

FIRST.

The Law of the Case, and the Rights of the Complainant.

I. *The Jurisdiction.*

The citizenship of complainant entitles him, in a proper case, to the aid of a Federal tribunal. Is there anything in the character of the defendants, or in the nature of this suit, to debar him from that relief? In other words, is this one of those suits against a State which the Federal courts can-

not entertain? Surely not; and if I pause to demonstrate the truth of this assertion, it is more from deference to the earnest efforts of my learned opponents, who seem to rely chiefly upon this defence, than to the actual legal strength of their position.

Let it be specially noted that there is here a fundamental and most important difference between this suit, which is a suit to enforce a contract made by Virginia *between her tax collectors and her coupon holders*, and the various other suits reviewed by this court, seeking to compel the payment of money by a State or its officers, or to obtain the possession of property owned by it, or held by them. It is that this is a suit for the specific *performance of a contract*, not alone by the State, but by certain State officials, in manner and form as the State has contracted and directed that they should do, and as the courts of Virginia, in *Antoni* v. *Wright, Sheriff*, 22 Grattan, 833; *Wise* v. *Rogers, Auditor*, 24 Grattan, 169; *Clarke* v. *Tyler, Sergeant*, 30 Grattan, 134; and *Williamson* v. *Massey, Auditor*, 33 Grattan, 237, and this court, in *Hartman* v. *Greenhow, Treasurer*, 102 U. S. 684,—have decided, it is their duty to do.

Here, therefore, are two conflicting laws imposing duties upon these officers—one commanding him to receive coupons, the other to refuse them. Which must he obey? Does not this present for consideration a simple question of the construction of these statutes? and if so, may they not be construed, in the absence of the State from the record, just as the constitutionality of any other law might be so determined? The relief asked is available, because of the peculiar character of the coupon, which is solvable not only in money, but in taxes. In this respect this case differs from all those from other States heretofore before this court, and does not possess those features which have been considered the chief barriers to the jurisdiction when it has been declined.

The decision in *Louisiana* v. *Jumel*, 107 U. S. 712,

is one of the latest wherein the court refused the jurisdiction. The Chief-Justice there stated that the reason of the refusal was not that this court could not entertain a suit, in a proper case, against a State official in his official capacity, for that has been done hundreds of times, but that this court could not entertain a suit against a State without its consent, could not enter a judgment for money against a State, and could not compel the withdrawal of money from a State treasury, or administer its finances. But owing to the peculiar character of the coupon contract, none of these acts are asked or needed by the complainant. Hence it is urged that the conclusive reasons for not taking jurisdiction in cases like *Louisiana* v. *Jumel* do not at all apply here.

But without this it cannot be successfully maintained that this suit encroaches upon the reserved rights of the State, or that it does not clearly fall within the jurisdictional limits prescribed by the Court.

The recent case of *Swasey* v. *The Treasurer of North Carolina, et als.*, decided by the Chief Justice within the last few years, is singularly apposite, and the decision precisely in point. The suit there was by State bondholders to procure the specific performance of a contract made with them by the State, that they should have certain railroad stock owned by it and the dividends thereon, as security for the prompt payment of the coupons, and if these were not paid by the State, the dividends were to be paid to the coupon holders.

The parallelism with the suit at bar is remarkable and evident. The Chief-Justice said:

"It has long been held that the eleventh amendment of the United States Constitution applies only to suits in which the State is a party to the record, and not to those in *which it has an interest* merely. It is next urged that if the State is not actually a party to the suit, it is a necessary party, in whose absence the cause cannot proceed; and that as a State cannot be brought into court, no relief should be granted upon the case made. If the State could be brought into court, it un-

doubtedly should be made a party before a decree is rendered; but since the case of *Osborne* v. *The Bank of the United States*, in 9th Wheaton, it has been the uniform practice of the courts of the United States to take jurisdiction of causes affecting the property of a State in the hands of its agents without making the State a party, when the property or the agent is within the jurisdiction. In such cases the courts act through the instrumentality of the property or agent."

In the case of *Osborne* v. *The Bank*, just referred to, 9th Wheaton, 738, it will be remembered an injunction was sustained against the Treasurer and Auditor of Ohio to prevent the seizure of money of the bank in payment of taxes levied under an unconstitutional law. It was urged that the State of Ohio, though not nominally a defendant, was the real party in interest, and that the suit was in fact against the State. But the Court said, CHIEF-JUSTICE MARSHALL delivering the opinion:

"If the State of Ohio could have been made a party defendant, it can scarcely be denied that this would be a strong case for an injunction. The objection is that, as the real party cannot be brought before the court, a suit cannot be sustained against the agent of that party; and cases have been cited to show that a court of chancery will not make a decree unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal,—the person who is the true source of the mischief, by whose power and for whose advantage it is done,—be himself above the law, —be exempt from all judicial process,—it would be *subversive of the best established principles* to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him, could his principal be joined in the suit.

And the treasurer and auditor were required *to take the money seized out of the treasury*, and return it to the bank.

The latest exposition of the law upon this subject, and the most instructive and interesting, is found in the

recent decision in *Cunningham* v. *The Railroad*, 109 U. S. p. 446. Rules are there formulated for determining what suits of this character may be entertained, which are declared to "have been based upon principles whose soundness cannot be disputed," p. 451. It is fortunate to have this decision for guidance, for the "third class" clearly includes the case at bar, and demonstrates it to be one of those of which this court has always taken jurisdiction. Said the court, p. 452:

"A third class, which has given rise to more controversy, is where the law has imposed upon an officer of the government a well defined duty in regard to a specific matter not affecting the general powers or functions of the government, but in the performance of which one or more individuals have a distinct interest capable of enforcement by judicial process. . . . . It has, however, been much insisted on that in this class of cases, where it shall be found necessary to enforce the rights of the individual, a court of chancery may, by a mandatory decree or injunction, compel the performance of the appropriate duty, or enjoin the officer from doing that which is inconsistent with that duty and with the plaintiff's rights in the premises."

In further explanation, the case of *Davis* v. *Gray*, 16 Wall. 203, is cited, wherein the governor of Texas was enjoined from issuing certain land warrants, and the court used the following language:

"Where the State is concerned, the State should be made a party, if it can be done. That it cannot be done is a sufficient reason for the omission to do it, and the court may proceed to decree against the officers of the State in all respects, as if the State were a party to the record. In deciding who are parties to the suit, the court will not look beyond the record. Making the State officer a party does not make the State a party, although *her law may have prompted his action*, and the State may stand behind him as the real party in interest. A State can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case."

The case of the *Board of Liquidation* v. *McComb*, 91 U. S. 531, is then referred to, and the following language from the decision delivered by Mr. Justice Bradley, quoted as well and tersely expressing the rule and its limitation:

"The objection to proceedings against State officers by mandamus or injunction are, first, that it is in effect proceeding against the State itself; and second, that it interferes with the official discretion vested in the officer. It is conceded that neither of these can be done. A State without its consent cannot be sued as an individual; and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter. But it has been settled, that where a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain a personal injury by such refusal may have a mandamus to compel performance; and where such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it."

Now, the case at bar is as clearly within these conditions as if the language had been purposely selected by the learned Justice to suit it. The relief asked, *i. e.*, the reception of the coupon, is surely but the plainest and simplest of ministerial duties, expressly imposed by law upon these defendant officials; the refusal so to accept it is certainly a personal injury; *mandamus* to compel performance cannot be had, because the writ for this purpose has been abolished in Virginia (see Session Acts 1882, p. 36, approved January 26) and by the same act the right to sue a collector for damages for refusing to take coupons has been taken away, so that adequate compensation cannot be had at law; hence by the above decision such persons, having no remedy at law, are clearly entitled to relief in equity, and by mandatory injunction, if need be.

The reasons given by this court for refusing to take jurisdiction in the Louisiana debt cases (107 U. S. 711), and which

are repeated in *Cunningham* v. *The Railroad* as the reasons which determined the court's decision in the former cases, shows that the decision was not considered to be in conflict with the principles above enumerated, and therefore is not adverse to the suit of the defendant in error. It is said in *Cunningham* v. *The Railroad*, that these cases sought to carry the above principles to a greater length than hitherto, and that the court refused to go further, because there was no jurisdiction to take charge of the treasury of a State and distribute the funds found there. 109 U. S. 455.

I think I may safely consider, upon the authority of all these decisions, and especially of the last named, that this court hath jurisdiction to determine this suit, and that the demurrer in that respect was properly overruled by the court below. Although many cases of this character have been before both the Supreme Court of Virginia, and before this court also, it hath not been contended until now that they are such suits against the State as are forbidden. The cases in Virginia of *Antoni* v. *Wright, Sheriff*, 22 Grat. 833; *Wise* v. *Rogers, Auditor*, 24 Grat. 169; *Clark* v. *Tyler, Sergeant*, 30 Grat. 134; *Williamson* v. *Massey, Auditor*, 32 Grat., 237; and of *Hartman* v. *Greenhow, Treasurer*, 102 U. S. 684; *Antoni* v. *Greenhow, Treasurer*, 107 U. S. 770; and *Smith* v. *Greenhow, Treasurer*, 109 U. S. 669, were every one of them suits like this to compel the State collector to receive coupons, and yet in none of them was the defense made that they could not be entertained because they were in effect suits against the State.

The learned counsellor, who so admirably represents the appellants here, and who until recently adorned our own Supreme Bench, alone dissented in all the above Virginia decisions; but in his able dissenting opinions, not a word is said as to any lack of jurisdiction for such a reason. And yet observe that the same officers were defendants there, as here, and the object of the suits the same.

II. *The Parties.*

An examination of the laws of Virginia concerning the

collection of taxes, especially the recent license law—see Session Acts 1883–'4, p. 120 and p. 189—will show the propriety of joining the collector and the Commissioner of the Revenue as defendants. The collectors, of whom the Auditor is one in regard to certain taxes, are all agents of the State, whose duty it is to receive these coupons when tendered; it is the separate and independent duty of each and every one of these officers so to receive them; they are in effect, all of them, joint and several obligors upon the coupon contract; and it is the privilege of complainant to have them received by every collector in the State. He may therefore ask relief against one, or as many as he pleases; to forbid him to join them in a single suit would be to require a multiplicity of suits, which equity abhors. And in as much as the license law requires the joint action of both collector and Commissioner of Revenue before a license can be obtained, it was not only proper, but necessary that the latter too should be made defendants, in order that they should be compelled to recognize the sufficiency of a payment for a license in coupons, instead of in money, as the act unconstitutionally (in this respect) requires. The statute is that the Commissioner of the Revenue shall issue the license applied for when presented with a certificate from the collector (or Treasurer) that the tax thereon has been paid in money; it was therefore necessary, when the decree provided that this tax should be paid in coupons, that the Commissioner of the Revenue should also be before the court, in order that he might be directed to receive and act upon such a certificate of payment in coupons, in the same manner as if it had been a certificate of payment in money. The following is the act:

Lafette Co v Moulton
112 US 223

"AN ACT

"*To regulate the granting of licenses for the exercise of any privilege, approved February* 7, 1884, *as amended by the act approved February* 25, 1884, *entitled an act to amend and re-enact the first and second sections of an act approved February* 7, 1884, *entitled an act to regulate the granting of licenses for the exercise of any privilege.*

"1. Be it enacted by the General Assembly of Virginia, That every person or firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this State, desiring to obtain such license, shall make application therefor in writing to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or the auditor of public accounts, in such cases as he is authorized by law to issue a license, in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a condition precedent to the issuing of such license, accompanied by the certificate in writing by the treasurer of the county or corporation wherein such business is proposed to be conducted, stating the said amount in gold or silver coin, United States treasury notes, or national bank notes, has been deposited with him by said applicant: provided, however, in such cases as the auditor of public accounts is authorized by law to issue licenses, such deposit as herein provided for shall be made with him at the time such application is presented, instead of with the treasurer.

"2. Upon the receipt by the commissioner of the revenue, or auditor, as the case may be, of an application of a person or firm, partnership or company, who has complied with the foregoing section, he shall endorse said application as follows: I find the within application correct, and in due form, and accompanied with the certificate in writing of the treasurer of the county or corporation, that the sum of ——— dollars, in gold or silver coin, or United States treasury or national bank notes, has been deposited with the said treasurer, or that the same accompanied the application, and was deposited with the auditor, as the case may be; to which endorsement he shall sign his name, and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it shall appear that all the provisions of this act shall have been complied with, then the court or person having authority to grant or issue such license may hear the application, and if in due form, may grant such license: provided that, in case such license shall be refused, such refusal shall be entered upon such application, and the same returned

to the applicant, who, upon presenting said application, endorsed with such refusal, to the officer with whom the deposit was made, shall have the same returned to him by the said officer.

"3. When an application shall have been made and approved, and the amount assessed shall have been received by the proper collecting officer, according to the provisions of this act, and his receipt therefor, specifying in what currency such payment was made shall be given, then, and not until then, shall it be lawful for the court or person having authority under the law to grant such license. The order of court, when the license is obtained in court, and the license itself, when not obtained in court, shall specify that the assessment was made according to law, and that the amount assessed had been paid in money or currency, according to the provisions of this act.

"4. No application for a license to do any business, or to follow any profession, trade or calling in this State, shall be made, and if made, shall not be considered except in pursuance of this act, and no such license shall be granted unless all the requirements of this act shall have been first complied with; and any license granted or obtained in violation of the provisions of this act shall be null and void, and the person or persons, firm or association, joint stock or incorporated company, which may obtain such license, and attempt to do business thereunder, shall be deemed to violate the law, and shall be liable to all the forfeitures, pains and penalties for such violation, and in the same manner as if no such license had been obtained, and in addition thereto, fined not less than fifty dollars, nor more than five hundred dollars.

"5. Any assessor, treasurer, or other officer, charged with any duty pertaining to the granting of licenses, who shall violate this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars.

"6. The auditor of public accounts shall forthwith have prepared and furnished to commissioners of the revenue of this State blank forms of applications for licenses required to be made in writing by this act.

"7. This act shall be in force from its passage."

III. *The Right of Complainant under the Coupon Contract.*

"The right of the coupon holder is to have his coupon received for taxes when tendered." *Antoni* v. *Greenhow*, 107 U. S. 775, and the numerous Virginian cases already cited.

This receivability feature is an inherent and most valuable factor in this negotiable coupon contract, (*Hartman* v. *Greenhow*, 102 U. S. 684,) which the holder of the coupon hath right to assign therewith to whomsoever he may choose, with the guarantee that the coupon shall be so received upon presentation. To deprive him of this privilege, which is, in fact, his only security, and in effect is a self-executing lien upon the revenue of Virginia, either directly, by forbidding its exercise, or indirectly, by such obstructive legislation as has been resorted to, is an attack upon his rights, which no court will countenance; for it deprives him of the most valuable, indeed the only valuable, element of his coupon which remains. For speedy redress of such a wrong, he is surely entitled to appeal to equity, the law courts having been closed against him. Enough has already been said to show that he is also entitled to a writ of injunction, if that can be so framed as to afford him the quickest and fullest relief.

The obligation of the State expressed upon the coupon is either that she will pay it, or that her tax collectors, one and all, will receive it on payment of anything due her. She having failed to pay, he hath now the right to demand that these collectors carry out the part of the contract imposed upon them [observe the difference here from the Jumel Case, 107 U. S. 723, wherein the Chief-Justice says: "The officers owe duty to the State alone, and *have no contract relations* with the bond holders"] by the State, upon the faith of which they surrendered their old bonds. And, indeed, this promise and contract that they should be so received, given upon this *negotiable* instrument, necessarily includes the right to dispose of it to tax payers, with the guarantee which the defendant in error is now seeking to have preserved; for this is one of the most available means of realizing a part of the interest promised, and was unquestionably

given by the State as a security, and for the very purpose of enabling the bond holder to have his coupons so used, and thus have always a ready market for their sale, should they not be punctually paid. This seems to be fully conceded by the defendants, for I find on page 19 of the brief of the Attorney-General of Virginia, filed in the case of *Poindexter* v. *Greenhow*, No. 588, and other allied cases just argued in this court, the following statements:

"These bonds, with these coupons as above indicated, have all the qualities and incidents of commercial paper. The coupons are payable to bearer; they are transferable by mere delivery; their very form indicates that they were designed to be put upon the market; their very receivability for taxes and other characteristics were intended to promote their credit, and make them desirable to business men."

It remains, then, to consider what remedy the complainant is entitled to for the preservation of this important right and privilege.

SECOND.

The Remedy Available to Him, and Herein of the Special Relief Granted.

The complainant, relying upon his contract to assign his coupons to tax payers, together with the assurance that they would be received for taxes when presented, asks that the collectors who are now refusing to perform this contract be forthwith enjoined from continuing to deprive him of its benefits, and from thus preventing him from selling his coupons, as it was agreed he might do. It is true that there are statutes forbidding them to accept anything but money in payment of taxes, but these have been again and again pronounced unconstitutional, as impairing the obligation of the coupon contract, by the continuous line of decisions of the Virginian Court of Appeals already cited, and by this Court also in *Hartman* v. *Greenhow*, 102 U. S. 672, and *Antoni* v. *Greenhow*, 107 U. S. 770. It is also settled that laws pronounced to be unconstitutional will be

regarded as no laws at all, and treated as utterly null and void.

Said this Court in *The Board of Liquidition* v. *McComb*, 92 U. S. 531 and 544:

"In such cases the writs of *mandamus* and injunction are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void."

Manifestly, therefore, it is the duty of the Virginian collectors to receive these coupons for taxes as soon as tendered, notwithstanding the laws forbidding them to do so.

It matters not that the collector may think that the higher State officials will not receive them from him on settlement. It is the province of the courts to define the laws, and all persons must conform their actions to the laws thus declared. If the law in Virginia be found to be that these tax collectors must receive these coupons in payment of taxes in lieu of money, then it will also be that the higher officials must receive them from the tax collectors in settlement of their accounts. The tax collector cannot be heard to justify his refusal to obey the law by saying that the auditor, or any one else, will not do so.

But the contract made by the State is that the *tax collector* shall receive the coupons for taxes; so that when they have done this, the contract, so far as the coupon holder is concerned, has been performed, and he has no further concern with what disposition may be made of the cancelled coupons; —for observe that the law requires the tax collector *to cancel them* when he receives them, by marking them with the initials of the payer and the date of the reception. His hand is the hand of the State, and when he takes them the State has them in possession. He cannot be damaged by receiving them, as it matters not whether the State takes them from him, because his possession is already the possession of the State, he having received and cancelled them as

her agent, under her authority; so that anything further is a mere matter of detail as to who shall keep them for the State. If the agent have authority to receive, he cannot refuse for fear that the principal may refuse to receive from him.

The contract is that the tax-collector shall receive the coupon. What thereafter may be done with it is a matter of no consequence, save to the State herself. If she choose to leave it in the custody of her tax-collector, well and good; if she does not choose to provide any means by which it shall be received and kept in more secure hands, that is a matter for herself alone; and certain it is that she cannot defeat the coupon holder's right to have his coupon received by the tax-collector, by failing to provide any mode by which the collection may be transferred from one official to another. If he receives them by order of this court, it is certain that his superiors could never compel him to account in money for the taxes thus paid in coupons, and therefore he cannot possibly be damaged by so receiving them.

But if there be no valid law forbidding the tax-collector to receive them (as I contend), then there is none to prevent their reception from him.

One of the favorite grounds upon which a chancery court will grant relief is where by doing so a multiplicity of suits and vexation litigation is avoided. Such reasons are found to the fullest extent in the case at bar, because, if as claimed by defendants, complainant's only relief is to have his coupons verified by each tax-payer using them, as provided in the act of January, 1882, certainly a great multiplicity of suits will be necessary, for each tender will require a separate suit, and from what has already been shown, most vexation litigation will be resorted to by the officials of the State.

Another ground of jurisdiction in equity is to prevent an irreparable injury, such as this complainant was threatened with, in that the tax-payers who had agreed to use his coupons would only do so upon condition that that they would

be received from them in payment of their tax immediately upon presentation.

But the principal ground relied upon is, that the complainant has not other adequate relief. The courts of law have been absolutely closed against him; he can have neither mandamus or trespass; and the remedy afforded by the act of January, 1882, for verifying and collecting coupons is not available for him at all, because by its very terms it is only applicable to tax-payers. As already demonstrated, all, or if not all, certainly far the larger portion in amount of the taxes levied and collected by the State, are positively forbidden to be paid in coupons in any manner, and hence are excluded from the provisions of this act. In addition, and since it was passed under review by this court, the proceeding has been so changed, obstructed, and curtailed, as already explained, that it has been made unconstitutional, by laws requiring appeals in all cases; forbidding the attendance of the state officers as witnesses to prove the coupons; requiring excessive license taxes of the counsel conducting the suits, and of the broker who sells the coupons to tax-payers; limiting the scope of the act so as to exclude from its operation all license, school and other taxes; and above all, changing the character of the payment of the coupon, and making it a payment of part of the principal of the bond, so that the remedy is no longer what it was when the Chief-Justice thus described it in *Antoni* v. *Greenhow*, 107 U. S. 781:

"But in the present case the performance sought is the payment of money, and the remedy substituted is equivalent to an action for its recovery, with ample provision for the satisfaction of every judgment that may be obtained; for it is made the ministerial duty of the treasurer to pay the amount of the recovery out of the first money in the treasury, and in preference to all other claims, as soon as the judgment is properly certified. The language of the act is, 'shall refund the money before then paid for his taxes by the tax-payer out of the first money in the treasury in preference to all other claims.' . . . It will be time enough to consider the *effect of a repeal of this branch of the*

*remedy when that shall be attempted.** The primary obligation of the State is for the payment of the coupons. All else is simply a means to that end. It matters not whether the coupons have been refused for the taxes, if full *payment* of the amount they call for is actually made in money. A remedy which is ample for the enforcement of the payment in money is ample for all the purposes of the contract. This we think is given by the act of 1882."

But under this new legislation, the nature of this remedy has been entirely changed. It is no longer a means of enforcing "the payment of the coupon," or, as the statute says, "the return of the money paid for taxes." It is true that the amount of the coupon or payment may be returned; but the proceeding can no longer be described in the words of this court as "the payment of the coupon," because, since it was so characterized, the legislature of Virginia has made a law (Acts 1883-'4. p. 721, approved March 19, 1884,) requiring that three-fourths of the amount of every coupon so paid shall be considered not as payment of the coupon, but as payment of so much of the principal of the bond from which it was cut. Thus, if A, a tax-payer, tender a coupon bought of B, a bondholder, and pays his tax in money, he may prove the coupon, and receive back the money he has paid; but this is now treated, not as a return of the money paid, as the statute provided, and as the court considered, and therefore sustained the act, *but as a payment of part of the principal of B's bond, although it is paid to A, and not to B.*

These modifications and changes, especially the last, it is confidently submitted, render this law now plainly unconstitutional, and therefore null. It is amazing that, in the face of the perfectly well understood principle, that an old remedy which is part of a contract cannot be substituted by a new one, unless it be equally efficacious, which principle

* Since this decision the Supreme Court of Virginia has decided that the laws of the State do not permit the treasurer alone to make these payments. *Taylor* v. *Williams*, 78 Va. 422.

was so clearly announced by this court, in *Antoni* v. *Greenhow*, when considering this very remedy, as to appear to have been intended as a note of warning, these fatal modifications should have been entertained for a moment. Under the old *mandamus* remedy, the bondholder collected his interest coupon as interest merely, and it was so treated. Under the new remedy, newly modified, if the claim of the defendants that complainant, not being himself a tax-payer, has no standing in court, be correct, the coupon holder must sell his coupon to the tax-payer at the market price, say forty cents on the dollar, thus depreciated because of these very difficulties, which, when paid *to his vendee*, not to himself, is charged against the principal of his bond, at double what he received for it; so that he is getting no interest at all as interest, and the principal of his bond is charged with double the amount he actually receives. Nor can he object to this mode of application, because he will be held to have consented thereto, having allowed his coupon to be proved and paid, with full knowledge that these were the terms upon which he was permitted to do so. It is simply absurd to talk about there being any approach to equality between two such remedies.

I contend, however, that this new remedy has really been repealed, perhaps through inadvertence, perhaps ignorantly; for what may not be presumed of a legislature capable of passing the laws just alluded to? The last tax bill, approved March 15, 1884, (Acts 1883–'4, p. 603, §§ 112, 114,) provides that all taxes assessed therein shall be paid only in money, (§ 112,) and that all inconsistent acts and parts of acts are repealed (§ 114). As any payment of taxes with coupons, under the act of January, 1882, is certainly inconsistent with the above provision "that no tax shall be paid save in money," it seems that, among the many other remarkable proceedings of the last legislature, they have actually repealed the very act which they were blindly endeavoring to strengthen. "Whom the gods destroy they first make mad."

But even if this remedy were still available for the payment of *all* taxes with coupons, which it is not, it could not affect the rights of this non-resident complainant to crave equitable aid of a Federal tribunal. A court of chancery will be guided by substance rather than mere form, and the professed object of this so-called remedy being to secure the State against loss by receiving spurious coupons, it will suffice if the verification has been done once for all, as here, the complainant having already procured the proof of other coupons from these same bonds in the mode prescribed. On the other hand, the Federal courts in chancery are not bound to administer justice according to the requirements of the State in which they may be sitting.

In this connection I am content to quote the opinion of Judge Bond of the lower court, in the matter of the *B. & O. R. R. Co.* v. *Allen*, now before this court on appeal by the State. It will be found in XVII. *Federal Reporter*, p. 174.

In that case the Baltimore & Ohio R. R. Co. tendered coupons in payment of its taxes; they were refused, and the collector proceeded to levy upon their property, whereupon the company applied to the Circuit Court of the United States for Virginia for an injunction and a decree declaring that the tender of the coupons paid the tax, and it was so ordered, and afterwards made perpetual.

The following extracts from the decision of the learned Judge are most pertinent:

"That the coupons must be received for public taxes when tendered, the Supreme Court has emphatically decided, (*Antoni* v. *Greenhow, supra.*) The language of the Court is, 'The right of the coupon holder is to have his coupons received for taxes when offered.' The fact here is that the complainant tendered coupons and they were rejected. . . . . It is clear, then, that the right of the coupon holder has been denied, according to the interpretation of the Act of March 30, 1871, by the Supreme Court. What remedy has he?

"In the case of *Antoni* v. *Greenhow*, *mandamus* was sought

as the remedy; but the forms of proceeding required in Virginia were not complied with because complainant alleged they were unconstitutional. But the Supreme Court decided 'that the change in the mode of proceeding did not impair the obligation of the contract.' It expressly decided, as we have seen, that 'the right of the coupon holder was to have them received when offered;" and that if he sought the remedy by *mandamus* he must follow Virginia practice.

"The allegation or claim of this complainant is that it owes no taxes,—that the tender of the amount in coupons has paid the debt. It does not ask the Court to compel the tax collector to do any act he refuses to do, but to stop him from doing an unlawful thing; . . . . and surely, although the writ of *mandamus* is altered so as to be useless for the purposes of his case, the Supreme Court has not decided that he has no remedy whatever. Had such been its decision, it would have declared that the words 'was receivable when offered' meant, or should read, 'was receivable after they had been reduced to judgment,' for that is the only form under which, by the writ of *mandamus*, the receipt of coupons can be compelled in Virginia.

. . . . . .

"The bill does not seek a remedy under any of the methods of practice provided by Virginia. It appeals to the equitable jurisdiction of the United States Courts. The complainant is a non-resident of this State, asserting a right which the Supreme Court, in *Antoni* v. *Greenhow*, as I understand it, decides that it has, and a failure to enforce which will cause it irreparable damage. The complainant has no adequate remedy at law; the writ of *mandamus* is of no avail to it; . . . . it cannot sue the tax collector for trespass, for, since the institution of the suit of *Antoni* v *Greenhow*, this State has by law forbidden it to do so. Altogether it seems to me that complainant would be remediless, and his 'right' a delusion, did not a court of equity listen to it.

"The argument of the Attorney General that this action is not within the jurisdiction of this Court, because it is in fact a suit against the State, which does not permit itself to be sued, does not seem to me to be sound. From the case of *Bank* v. *Osborne* down to the Arlington case, recently decided, this form

of action has been sustained by the Supreme Court in proper cases.

"You may not sue the State unless she consents; and if she be an indispensable party, not consenting, you can maintain no action at all. But she is not a necessary party, and the complainant here can prevent his anticipated wrong and irreparable injury by restraining the party about to commit it without joining the State. Nor does the fact that the State has provided a remedy deprive him of any other that exists. The complainant is a non-resident of Virginia. His citizenship entitles him to apply to the United States courts for the exercise of their equitable jurisdiction in a proper case. That equitable jurisdiction was not derived from the States, but from the Constitution of the United States, and remains the same no matter what laws are passed by the States respecting legal remedies or forms of procedure. This is the proper forum of the non-resident citizen, and he is not deprived of his rights in it by the passage of any law by the Legislature of Virginia respecting suits at law against tax collectors of the State. We have here a non-resident citizen; he seeks relief against a tax collector who is about to do an act which, if the *prima facie* case made in the bill can be maintained, will do it irreparable injury, in violation of the Constitution of the United States. This jurisdiction has been exercised many times by the United States Courts in like cases, and in my judgment the prayer of the bill should be granted, and the preliminary injunction issued as prayed; and it will be so ordered."

If these conclusions be sound, it is confidently submitted that the decree now complained of must be affirmed. The B. & O. Co., in the above suit, was a coupon holder only, hence whatever rights it had must have primarily rested in the bond holder from whom it obtained the coupons. If, therefore, the assignee of the coupons hath the right to an injunction to compel their reception, the assignor of that right,— *i. e.*, the bondholder—must likewise be so entitled, and if he be damaged by the notorious refusal of that right, which notority excuses any previous tender (*Tracey* v. *Irvine*, 18 Wall. 549), he is surely entitled to the protection of a court of equity. And if it was proper, as in the above suit, to afford the relief asked for at the conclusion of the suit,

why not in a subsequent case, as that at bar, where the same identical right is asserted and not denied, afford the relief by preliminary mandatory injunction at the beginning? For every day's denial of an established right is a new tyranny and oppression, and courts should hasten to afford relief as soon as it is ascertained that complainant is entitled to it.

There only remains for consideration under this head a single additional point: *i. e.*, whether the court should have granted a preliminary injunction of this kind, which, in effect, gave the complainant full relief before the hearing of the case. I cannot find that there is any error in this. An injunction from its very nature is of necessity a summary proceeding, and if a *prima facie* case for immediate relief is made, the writ certainly cannot be refused because it may afford complete relief before the action has regularly matured. If complete relief be afforded in fact, it is due rather to the form of the contract which the State has chosen to make in order to induce her creditors to release her from one-third of her obligations, than to any peculiarity in the aid afforded by the court. But upon examination it will be found that it is no extraordinary thing for just such injunctions to be summarily granted upon motion; and it will be observed that in this case it was not awarded until the full and complete defense had been made, which was solely upon the law of the case, none of the facts alleged being denied, and that no other was offered upon the final hearing a few days later, so that the hearing of the preliminary motion was really a hearing of the whole case upon the merits. If it be true that the granting a preliminary injunction is a matter entirely within the discretion of the court from which no appeal lies, then this point need be discussed no further, and the argument may be confined to the propriety of the final decree, which, if in itself correct, cures all previous errors in the cause, because the object of the appellate court is only to see that the very right and justice of the matter has been administered, regardless of the forms or the modes by which the conclusion has been reached.

Indeed, as the court really had the whole case before it upon the motion for the preliminary injunction, demurrer, pleas, answer, and all, there seems to be no good reason for any distinction between the effect of the order then granted and the mere formal confirmation of it upon the final hearing; for the object of the latter hearing of the case is solely for the benefit of the defendants, and to enable them to perfect and strengthen their defense; but this they did not do; they made their entire defense upon the preliminary motion; they had nothing further to say upon the final hearing. And so, if complainant's rights entitled him to the final decree, there can be no reason why they should not have been secured to him at the earlier stage of the proceeding, upon the motion for the injunction. If the defendants were injured by the order then made, the remedy of a motion to dissolve was open to them at any time; but instead of availing themselves thereof they consented to go to trial immediately, and upon the same defense already made. Here was a confession, therefore, that their whole case had been fully made out on the preliminary motion, and that as no motion for a dissolution was made, but a trial upon the merits consented to forthwith, there was no special injury inflicted by granting the injunction upon the preliminary motion, and no greater damage done to them by granting it then than upon the final hearing; and observe that the preliminary injunction was never perfected, as complainant did not execute the bond required for that purpose.

Let it be considered, then, whether the defendant in error was entitled to the injunction order at all.

An injunction, the text-writers say, is a writ issuing out of chancery, framed according to the exigencies of the case, commanding the defendant to do, or to refrain from doing, a particular thing. Kerr on Injunctions, p. 11; 2 Story Eq. Juris. § 861. And a mandatory injunction is thus described by Kerr, page 230:

"Though a court of equity has no jurisdiction to compel the

performance of a positive act tending to alter the existing state of things, such as the removal of a work already executed, it may, by framing the order in an indirect form, compel a defendant to restore things to their former condition, and so effectuate the same results as would be obtained by ordering a positive act to be done. The order, when framed in such form, is called a mandatory injunction. . . . . It may be granted upon interlocutory application."

Such injunctions, when interlocutory, as they frequently are, of necessity are equivalent to a final decree, and really give the complainant all the relief he asks for before final hearing. They have been largely used, both in this State, in the United States, and in England, when it is made to appear that the complainant will suffer greater damage by refusing him the writ than will be inflicted upon the defendant by granting it. Cases are abundant where full and complete relief has been granted the complainant by mandatory injunction upon a preliminary motion, and sometimes even without any appearance for the defendant. In *Brook* v. *Barton*, 6 Munf. 306, the court enjoined the defendant to permit the plaintiff to have the benefit of a covenant made with him. And in *Burwell* v. *Hobson*, 12 Grat. 322, a mandatory injunction was awarded requiring the *removal* of a dam. In *State of Penn.* v. *Wheeling Bridge Co.*, 13 How. 519, this court said that the mandatory injunction prayed to require the defendant to remove a bridge constructed across the Ohio river would be awarded unless the bridge was forthwith removed; and the right to this writ was distinctly declared in *Board of Liquidation* v. *McComb*, 92 U. S. § 531.

In a case reported in 24 Hun. (N. Y.) 172, the court said:

"A decree ordering the defendant to lower a dam to a prescribed height, and an injunction restraining him from continuing it above such height, accomplish precisely the same result. There can be no question of the jurisdiction of the court to grant relief in either mode."

In *R. R. Co.* v. *Baker*, 27 N. J. Eq. 167, the proceeding was in effect to compel the defendant to lower a dam by

restraining him from maintaining it above a specified height. Thus framed, the court said the injunction is not mandatory; but even if it were strictly so, that would not constitute a valid objection against it. There is no general rule against granting a mandatory injunction. See also Kerr on Injunctions, page 231.

In 23 N. J. Eq., page 161 and 251, mandatory injunctions were awarded to restrain defendants from refusing to allow plaintiffs to take the offal from their abattoir.

In 19 Minn. 497, a mandatory execution was awarded to forbid the continuance of a boom.

In Weir's Appeal, 74 Pa. State, 230, there was a mandatory injunction requiring the removal of a powder magazine.

In *Corning* v. *Troy Iron Co.*, 40 N. Y. 191, the court decided to interfere by mandatory injunction to compel the restoration of running water to its natural channel.

In *Pierce* v. *New Orleans*, 18 La. Ann. 242, said the court:

"The doctrine is now well recognized that an injunction may compel parties to do certain acts, as well as to restrain them from acting; that it is as effective to enforce a right, as to prevent a wrong."

In *Coe & Wilson* v. *Railroad*, III. Federal Reporter, Judge Baxter said, upon a motion to enjoin defendants from refusing to receive plaintiff's stock, etc.:

"Ought a mandatory injunction to go upon this preliminary application? Clearly not unless the urgency of the case demands it, and the rights of the parties are free from reasonable doubt. The duty which complainants seek to enforce is one imposed and defined by law, a duty of which the court has judicial notice. The injunction compelling its performance, pending this controversy, can do defendant no harm, whereas a suspension would work inevitable and irreparable mischief to complainants. Here an adequate remedy can be administered, and a multiplicity of suits avoided."

The above opinion is singularly applicable to the rights of complainant in the case at bar, for the court here having passed

already upon so many of these coupon cases, has judicial notice of the duty of the defendants to take the coupons; has knowledge that the rights of the parties are free from any doubt whatever; and that while complainant will suffer great and irreparable injury, if the relief be denied, no harm can come if it be granted; there will only be satisfaction of an undisputed debt, which is, at this very moment, offered to be redeemed if it be sufficiently sealed.

In *Denver R. R.* v. *A. & T. R. R.*, XV. Federal Reporter, p. 650: A mandatory injunction was awarded to compel the defendant to accept freight from and interchange traffic and passengers with complainant.

In *Balto. & Ohio R. R. Co.* v. *Adams' Express Co.*, XXII. Federal Reporter, p. 404; A mandatory injunction was awarded on motion to restrain the defendants from refusing to receive the parcels and freight of the complainants, from giving proper receipts therefor, and from paying advances and charges thereon according to custom, thus also affording full relief before the hearing of the cause.

In *Lane* v. *Newdegate*, 10 Vesey. 192, Lord Eldon granted the mandatory injunction, requiring defendants to repair canals, raise dams, and erect stop-gates.

In *Robinson* v. *Lord Byron*, 1 Bro. C. C. 588, he again granted a mandatory injunction upon motion, *and before appearance of defendants*, requiring the removal of certain obstructions, dams, and other erections which prevented the water from flowing to plaintiff's mill, thus in effect deciding the case, and affording complainant full relief before the hearing.

In *Rankine* v. *Huskisson*, 4 Simon's Eng. Chan. 16, upon a preliminary motion for injunction, the court awarded it before answer, commanding defendants forthwith to refrain from further constructing certain buildings, and to remove those already put up, thus also in effect deciding the real matter in controversy on this preliminary motion.

In *North England R. R.* v. *Clarence R. R. Co.*, 1 Call. 507, the Vice-Chancellor gave such an injunction *before an-*

swer, requiring defendants to pull down a wall, and allow plaintiff to build across their line.

And finally, in *Brown* v. *Pacific S. S. Co.*, 5 Blatchford, 525, Judge Blatchford awarded a preliminary mandatory injunction upon bill and affidavits alone, to prevent an *anticipated* injury, ordering the defendants to refrain from preventing the plaintiffs to vote their stock at an election for directors, to be held *that very day*, thus giving the plaintiff all the relief asked, not only before the cause was heard upon the merits, but in such a way as that no decree which might afterwards have been entered, could possibly alter what had thus, from the necessities of the case, been directed to be performed. Said the learned judge in his opinion:

"No want of time to meet the allegations of the bill has been set up, no application to postpone the motion has been made. . . . . 'It has been common to produce a positive effect through an injunction out of chancery by means of a prohibitory order.' (Redfield Law of Railways, Vol. II. § 224), and a mandatory order is in a court of equity seldom denied, unless the remedy at law is perfectly adequate. This case presents a case eminently of equity jurisdiction—a case of irreparable injury to the plaintiffs, and a case where no such injury can be produced to the defendants. Indeed, under the averments of the bill, that these transactions of the defendants will produce great injury to the interests of all the stockholders, and the admission or absence of denial of such averment, it is clear that there can be no injury to the proper interests of such of the defendants as are existing shareholders of the Pacific Mail Co., by granting such an injunction, whereas it is manifest from the statements of the bill that there is a clear case of probable irreparable injury to the plaintiffs."

But it is useless to multiply citations of authorities upon these points, for it seems to be accepted that the form of the injunction may be determined according to the necessities of the applicant; that if his needs justify it, and the probable damage to the defendants be not too great, he may have his full and complete relief by the preliminary order; that if

his case be such that the granting the injunction gives full relief, that furnishes no reason for refusing it; and that it may be, and often has been, used against public officers, and may not be refused because great public inconvenience would be caused. *Raphael* v. *Thames*, 2 Law Reports, Chcy. Appeals, 147; *Lloyd* v. *London*, 2 De Gex, J. & S. 568:

"When a plain official duty, requiring the exercise of no discretion, is encumbent and obligatory upon a State officer, he may be enjoined from acting in violation of such duty by any one who will thereby sustain a personal injury, for which adequate compensation cannot be had at law; and the relief by injunction in such a case is regarded as correlative to that by mandamus when sought to compel the performance of an official duty as to which no element of discretion exists. High on Inj. § 1300."

It is now perfectly well settled that an appellate court, when asked to review a decision of a subordinate tribunal, will examine the entire record, and refuse to interfere, if it be found that justice has been done, according to the very right and justice of the case. An inspection of this record will abundantly demonstrate, that according to this rule, the decree now complained of must be affirmed.

Not a single word has been said against the merits of the suit. It is not denied that the money called for by the coupon is due, nor is it denied that the State hath agreed that her collectors shall receive them for taxes. The unceasing and unscrupulous efforts of the legislature to avoid compliance with the promises of the State for which she received full value, furnish the chief defense relied on, so that this court is now asked to assist in the scheme to deprive of more than half their holding, these generous creditors, who, up to this time, have never failed to respond to every appeal made to them; who have not regularly been paid their interest for twenty-five years; who funded the arrearages when asked; who released one-half thereof when asked; who released one-third of their principal when asked; who lowered their rate of interest one-half when asked, and who are now sought to

be forced out of most of the little they have left after these many sacrifices; a scheme which, if successful, would leave them to-day with less than one-fourth of their original holding!

And here observe, that while the defendants thus appeal to the conscience of this high court not to impede this effort, by compelling the reception of coupons for taxes, many laws have been made which direct them to be received or to be paid without demur or question when offered by favored creditors, or upon specially advantageous terms. Thus, for example, all held by certain domestic institutions are paid and received without delay. If offered to be funded at half their face, into bonds worth but half *their* face, they are accepted without question; but if asked to be received for taxes, according to promise, every difficulty and delay is interposed; their genuineness is required to be established by a jury; the proper witnesses are forbidden to attend, and when finally, after a year's delay, and an appeal to the highest courts, with its consequent delays and costs, all falling upon the coupon holder, it is finally received, the State takes credit, and so charges the bond-holder for nearly double the face of the coupon, that is to say, for the coupon itself which is taken up and cancelled, and for seventy-six per cent. thereof besides which the law already referred to requires shall be charged against the bond from which the coupon was cut, and shall be taken as payment of so much of the principal thereof, although the payment is not made to the owner of the bond.

For these reasons, and for those so much more forcibly presented in the exhaustive opinion of the learned chancellor below, made part of this record, it is earnestly prayed that his decree be affirmed.

Respectfully submitted,

RICHARD L. MAURY,

For Defendant in Error.

RICHMOND, VA., *March* 14, 1885.